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THE TEXTS OF

# THE TRUSTEE ACT

AND OTHER ACTS RELATING TO THE  
ADMINISTRATION OF ESTATES

Accumulations

Adoption

Apportionment

Charities Accounting

Commorientes

Dependants' Relief

Devolution of Estates

Dower

Infants

Insurance

Mental Incompetency

Surrogate Courts

Trustee

Wills

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1946

NATIONAL TRUST COMPANY, LIMITED


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Ontario. Laws, statutes

<Consolidations>

The texts of the Trustee Act and  
other acts relating to the administration  
of estates 1946

~~Edwin A Goodman~~

~~Federal Bldg~~

~~Toronto~~





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-46T61

THE TEXTS OF  
**THE TRUSTEE ACT**  
AND OTHER ACTS RELATING  
TO THE  
**ADMINISTRATION OF ESTATES**



Compiled for the Convenience of the Legal Profession  
of the Province of Ontario

BY

**NATIONAL TRUST COMPANY, LIMITED**

TORONTO

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THE TRUSTEE ACT  
AND OTHER ACTS RELATING  
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ADMINISTRATION OF ESTATES

Printed in Canada by The Carswell Company, Limited



Compiled for the Convenience of the Legal Profession  
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BY  
NATIONAL TRUST COMPANY, LIMITED  
TORONTO  
HAMILTON



This book has been prepared for the convenience of the legal profession in Ontario and we trust that it will be found useful as a ready reference to the Statutes most frequently referred to in the administration of estates and trusts. Every effort has been made to ensure accuracy and we believe that the text will be found correct.

NATIONAL TRUST COMPANY, LIMITED

June, 1946.





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# CHAPTER 153

## The Accumulations Act

1.—(1) No person shall, by any deed, surrender, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so that the rents, issues, profits or produce thereof shall be wholly or partially accumulated for any longer than one of the following terms,—

Limitation of period during which accumulation permitted.

- (a) for the life of the grantor;
- (b) for twenty-one years from the death of the grantor or testator;
- (c) for the period of minority of any person living, or *en ventre sa mere*, at the death of the grantor or testator;
- (d) for the period of minority of any person who, under the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income, or rents and profits, directed to be accumulated.

(2) No accumulation for the purchase of land shall be directed for any longer period than that mentioned in subsection 1.

Accumulations for the purchase of land. Imp. Act, 55-56 Vict. c. 58.

(3) Where an accumulation is directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person as would have been entitled thereto, if such accumulation had not been directed. R.S.O. 1927, c. 138, s. 1.

Application of invalid accumulations. Imp. Act, 39-40 Geo. III, c. 98, s. 1.

2. Nothing in this Act shall extend to any provision for payment of debts of any grantor, settlor or devisor, or other person, or to any provision for raising portions for any child of any grantor, settlor or devisor, or for any child of any person taking any interest under any such conveyance, settlement or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but all such provisions and directions shall and may be made and given as if this Act had not been passed. R.S.O. 1927, c. 138, s. 2.

Saving as to debts or portions for children.

Or for timber.

## CHAPTER 218

## The Adoption Act

## 1. In this Act,—

“Adopted  
child.”

(a) “Adopted child” shall mean infant or other person authorized to be adopted;

“Adopting  
parent.”

(b) “Adopting parent” shall mean person authorized to adopt an infant or other person;

“Infant.”

(c) “Infant” shall include any other person sought to be adopted; and

“Minister.”

(d) “Minister” shall mean Minister of Public Welfare. 1941, c. 55, s. 1.

Application  
for order.

2.—(1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant under the age of twenty-one years, who has never been married, or to adopt any other person where the Minister of Public Welfare has in writing consented to such application being made, the court may, subject to the provisions of this Act, make an order (in this Act referred to as an “adoption order”) authorizing the applicant to adopt that infant or other person as the case may be. R.S.O. 1927, c. 189, s. 1(1); 1931, c. 23, s. 16(1).

Joint  
application.

(2) Where an application for an adoption order is made by a husband and wife jointly, the court may make the order authorizing them jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant. R.S.O. 1927, c. 189, s. 1(3).

When  
consent of  
minister to  
be obtained.

3.—(1) Except with the consent of the Minister of Public Welfare an adoption order shall not be made in any case where,—

(a) the applicant is under the age of twenty-five years; or

(b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made. 1931, c. 23, s. 16(2).

Special cir-  
cumstances.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the



making of an adoption order. R.S.O. 1927, c. 189, s. 2(2).

(3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody or lawful control of the infant or who is liable to contribute to the support of the infant; provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with, but no order dispensing with the consent of any person shall be made without notice to him, unless it is made to appear that after reasonable diligence he cannot be found. R.S.O. 1927, c. 189, s. 2(3); 1931, c. 23, s. 16(3).

Consent  
required.

Proviso.

(4) For the purposes of subsection 3 where a child has been committed to the permanent guardianship of a children's aid society under the provisions of *The Children's Protection Act* the society shall be deemed to be the guardian of the child and subject to the provisions of subsection 6 the consent of the society shall be sufficient. 1928, c. 29, s. 2(2).

Adoption of  
neglected  
child.

Rev. Stat.  
c. 312.

(5) Nothing herein shall be deemed to require the consent of the father of an illegitimate child to the making of an adoption order unless the child is resident with and maintained by the father. 1929, c. 23, s. 11.

When con-  
sent of father  
of illegiti-  
mate child  
required.

(6) An order of adoption shall not be made unless the provincial officer certifies in writing,

Certificate  
of provincial  
officer.

(a) that the infant has lived for at least two years with the applicant and that during that period the conduct of the applicant and the conditions under which the infant has lived have been such as to justify the making of the order; or

(b) that the applicant is to the knowledge of the provincial officer a proper person to have the care and custody of the infant and that for the reasons set out in the certificate it is in the best interest of the child that the period of residence be dispensed with. 1928, c. 29, s. 2(3).

No order without consent of husband or wife of adopting parent.

Proviso.

(7) An adoption order shall not be made upon the application of a husband or wife without the consent of the wife or husband as the case may be; provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found, or is incapable of giving such consent or that the husband and wife have separated and are living apart and that the separation is likely to be permanent. R.S.O. 1927, c. 189, s. 2(5).

Applicant to be resident and domiciled in Ontario.

(8) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Ontario, or in respect of any infant who is not resident within Ontario. R.S.O. 1927, c. 189, s. 2(6); 1928, c. 29, s. 2(4).

Conditions precedent to granting of order.

4. The court before making an adoption order shall be satisfied that,—

Consent.

(a) every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and

Welfare of infant.

(b) the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

No payment to applicant.

(c) the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction. R.S.O. 1927, c. 189, s. 3.

Terms and conditions.

5. The court in an adoption order may impose such terms and conditions as the court may think fit and in particular may require the adopting parent by bond or otherwise to make for the adopted child such provision (if any) as in the opinion of the court is just and expedient. R.S.O. 1927, c. 189, s. 4.

Use of name of adopting parent and rights.

6.—(1) Upon an adoption order being made, the child shall, unless the adopting order otherwise provides, assume the surname of the adopting parent and all rights, duties, obligations and liabilities of the parent or parents,

guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopting parent as though the adopted child was a child born to the adopting parent in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopting parent in the position of a child born to the adopting parent in lawful wedlock; provided that, in any case where a husband and wife are the adopting parents, they shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively. R.S.O. 1927, c. 189, s. 5(1). Proviso.

(2) In and by an adoption order the judge may in his discretion change the Christian or given name or names of the child to be adopted giving the child such name or names as the adopting parents may desire, and thereafter the child shall be entitled to and known by the name or names so given. 1935, c. 1, s. 2. Change of Christian or given name.

(3) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, but shall confer on the adopted child upon the intestacy of the adopting parent, the same rights to and interest in the property of the adopting parent as a child born in lawful wedlock of the adopting parent, and the expressions "child," "children" and "issue" where used in any disposition made after the making of an adoption order by the adopting parent, shall, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child. Rights to and interest in property.

(4) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal Inheritance from adopting parent.



property under a disposition by the adopting parent, or where an adopting parent takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopting parent in lawful wedlock.

"Disposition."

(5) For the purposes of this section, "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will, including codicil. R.S.O. 1927, c. 189, s. 5(2-4).

Rights re:  
Fatal  
Accidents.

(6) For the purposes of the enactments relating to fatal accidents the adopting parent shall be deemed to be the parent of the child. R.S.O. 1927, c. 189, s. 5(5); 1937, c. 72, s. 3.

Not to be  
deemed child  
of adopting  
parent  
except for  
specified  
purposes.

(7) Save as herein provided and as to persons other than the adopting parent, the adopted child shall not be deemed the child of the adopting parent.

Disposition  
of property  
where child  
dies  
intestate.

(8) If the adopted child dies intestate, his property acquired by himself or by gift or inheritance from his adopting parent or from the kindred of such parent shall be distributed as though he had been born in lawful wedlock to his adopting parent and property acquired from his natural parent or kindred shall descend as if no adoption order had been made.

Legitimation  
not to affect  
adoption  
order.

(9) An adoption order made with respect to an illegitimate child shall not in any way be affected by the intermarriage of its parents. R.S.O. 1927, c. 189, s. 5(6-8).

Interim  
order.

7.—(1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

Consent.

(2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent. R.S.O. 1927, c. 189, s. 6.



8. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopting parent under the adoption order last previously made shall, if living, be deemed to be the parent of the infant for all the purposes of this Act. R.S.O. 1927, c. 189, s. 7.

Effect of  
order on  
previous  
adoption.

9.—(1) The court having jurisdiction to make an adoption order shall be the Supreme Court, or

Jurisdiction  
as to mak-  
ing order.

- (i) the judge, or junior, or acting judge of the county or district court; or
- (ii) when designated by the Lieutenant-Governor in Council as a judge within the meaning of this Act, the judge of the juvenile court,

within whose jurisdiction either the applicant or the person to be adopted resides at the time of the application for the order. 1928, c. 29, s. 3.

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made, and dealing generally with all matters of procedure and incidental matters arising out of this Act, and for carrying this Act into effect may be made by the Lieutenant-Governor in Council.

Rules and  
regulations.

(3) An application for an adoption order may be heard and determined in chambers, and if the child was born out of wedlock this fact shall not appear upon the face of the adoption order.

Application  
to be heard  
in chambers.

(4) The papers used upon an adoption application shall be sealed up and shall not be open for inspection save upon the direction of a judge or the provincial officer.

Papers to  
be sealed.

(5) For the purpose of any application under this Act and subject to any rules under this section, the court may appoint some person to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court, and may direct the applicant to pay the costs of the person so appointed. R.S.O. 1927, c. 189, s. 8(2-4).

Guardian  
*ad litem*.

10. It shall not be lawful for any applicant or for any parent or guardian, except with the sanction of the court, to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any

Payment  
or reward  
unlawful.

applicant or to any parent or guardian any such payment or reward. R.S.O. 1927, c. 189, s. 9.

Adoption order where consent of parent or guardian not required.

11. Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or a husband and wife jointly as his, her or their own child under any *de facto* adoption, the court may, upon the application of such person or husband and wife, and notwithstanding the provisions of this Act, make an adoption order authorizing him, her or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made. R.S.O. 1927, c. 189, s. 10.

Registrar-General.

Rev. Stat. c. 88.

12.—(1) The proper officer of the court shall transmit a copy of every adoption order to the Registrar-General, under *The Vital Statistics Act*, within ten days of its making.

"Adopted children register."

(2) The Registrar-General shall establish and maintain a register to be called the "Adopted Children Register," in which shall be recorded all adoption orders.

Reference in Birth Register.

(3) The Registrar-General shall cause the birth entry or entries in the register of birth of the child adopted, to be marked with the word "Adopted" with a reference to the adoption register, and shall also cause to be included in the entry in the adoption register of the birth of the adopted child. R.S.O. 1927, c. 189, s. 11.

Rights of adopted non-resident as to succession in Ontario.

13. A person domiciled in any other province of the Dominion of Canada who has been adopted in accordance with the laws of the province where he is domiciled, shall be entitled to the same rights of succession as to property in Ontario as he would have had in the province in which he was adopted but not exceeding the right he would have had if adopted under this Act. R.S.O. 1927, c. 189, s. 12.

"Provincial Officer."

14. The Lieutenant-Governor in Council may appoint an officer in the public service to be known as "The Provincial Officer" for the purposes of this Act and may appoint any other officers for the carrying out of this Act and may confer upon any officer so appointed power to administer any oath or take any affidavit or statutory declaration in or relating to any matter arising under the

administration of this Act. R.S.O. 1927, c. 189, s. 13;  
1928, c. 29, s. 4.

15. The property and rights of all children adopted <sup>Application</sup>  
under the Act, 11 George V, chapter 55, shall be governed <sup>of Act to</sup>  
by the provisions of this Act. R.S.O. 1927, c. 189, s. 14. <sup>1921, c. 55.</sup>

## CHAPTER 220

## The Apportionment Act

Interpreta-  
tion.

"Annuities."

"Dividends."

"Rent."

Dividends,  
how deemed  
to accrue.Rents, etc.,  
how to  
accrue and  
be appor-  
tionable.Imp. Act,  
33-34 Vict.  
c. 35, s. 2.When ap-  
portioned,  
part of rent,  
etc., to be  
payable.Imp. Act,  
33-34 Vict.  
c. 35, s. 3.Recovering  
apportioned  
parts.

## 1. In this Act,

(a) "Annuities" shall include salaries and pensions;

(b) "Dividends" shall include all payments made by the name of dividend, bonus or otherwise out of revenues of trading or other public companies divisible between all or any of the members, whether such payments are usually made or declared at any fixed times or otherwise, but shall not include payments in the nature of a return or reimbursement of capital; and

(c) "Rent" shall include rent service, rent charge and rent seck and all periodical payments or renderings in lieu or in the nature of rent. R.S.O. 1927 c. 191, s. 1.

2. Dividends shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same is declared or expressed to be made. R.S.O. 1927, c. 191, s. 2.

3. All rents, annuities, dividends, and other periodical payments in the nature of income, whether reserved or made payable under an instrument in writing or otherwise, shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly. R.S.O. 1927, c. 191, s. 3.

4. The apportioned part of any such rent, annuity, dividend or other periodical payment shall be payable or recoverable in the case of a continuing rent, annuity, dividend or other such payment when the entire portion, of which such apportioned part forms part, becomes due and payable, and not before, and in the case of a rent, annuity or other such payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before. R.S.O. 1927, c. 191, s. 4.

5.—(1) All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns, respectively, of persons whose



interests determine with their own deaths, shall have such or the same remedies for recovering such apportioned parts when payable, allowing proportionate parts of all just allowances, as they respectively would have had for recovering such entire portions if entitled thereto.

Imp. Act,  
33-34 Vict.  
c. 35, s. 4.

(2) The persons liable to pay rents reserved out of or charged on lands or other hereditaments, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of the entire or continuing rent specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person, who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable by action from such heir or other person by the executors or other persons entitled under this Act to the same.

Proviso as  
to rents  
reserved in  
certain  
cases.

6. Nothing in the preceding provisions shall render apportionable any annual sums made payable in policies of assurance of any description, or extend to any case in which it is expressly stipulated that no apportionment shall take place. R.S.O. 1927, c. 191, s. 6.

Policies of  
assurance.  
Imp. Act,  
33-34 Vict.  
c. 35, s. 6.  
Stipulation  
against ap-  
portionment.  
Ibid, s. 7.

## CHAPTER 167

## The Charities Accounting Act

Notice of  
bequest or  
donation to  
be given to  
Public  
Trustee.

1.—(1) Where under the terms of a will or of any instrument in writing real or personal property or any right or interest therein or the proceeds thereof, have heretofore been or are hereafter given to or vested in any person as executor or trustee for any religious, educational, charitable or public purpose, or are to be applied by him to or for any such purpose, such person shall give written notice thereof, personally or by registered post, to the Public Trustee, and to the person, if any, designated in the will or instrument as the beneficiary under the bequest or gift, or as the person to receive the same from the executor or trustee.

Time for  
giving  
notice.

(2) The notice shall be given in the case of an instrument other than a will within one month after it shall have been executed and in the case of a will within the same period after the death of the testator.

When  
notice not  
necessary.

(3) No notice under this section shall be necessary where the trust has been completely executed before the 31st day of March, 1914, but the remaining sections of this Act shall nevertheless apply to every such trust. R.S.O. 1927, c. 152, s. 1.

Contents of  
notice.

2. The notice shall state the nature of the property coming into the possession or under the control of the executor or trustee and the notice to the Public Trustee shall be accompanied by an attested or notarial copy of the will or other instrument. R.S.O. 1927, c. 152, s. 2; 1930, c. 33, s. 2.

Executor or  
trustee to  
furnish in-  
formation  
to Public  
Trustee.

3. Every such executor or trustee shall furnish to the Public Trustee from time to time such information as to the condition or disposition of the property devised, bequeathed or given, and such other particulars, and in such form as may be required by the rules made under this Act. R.S.O. 1927, c. 152, s. 3.

Auditing  
accounts as  
to charitable  
legacies or  
grants.

4. Whenever required so to do by the Public Trustee, the executor or trustee shall submit the accounts of his dealings with all the property coming to his hands or under his control under the terms of the disposition, bequest or gift, to be passed and examined and audited by

the judge of the surrogate court of the county or district in which he resides or in which probate was granted. R.S.O. 1927, c. 152, s. 4.

5. If any such executor or trustee,—

- (a) refuses or neglects to comply with any of the provisions of sections 1 to 4, or with any of the rules made under this Act;
- (b) is found to have misapplied or misappropriated any property or fund coming to his hands for the purposes mentioned in section 1;
- (c) has made any improper or unauthorized investment of any moneys forming part of the proceeds of any such property or fund; or
- (d) is not applying any property, fund or moneys in the manner directed by the will or instrument;

Application to Supreme Court where executor or trustee in default.

a judge of the Supreme Court sitting in Chambers upon the application of the Public Trustee made by way of originating notice according to the practice of the Court, may make an order,—

- (e) directing the executor or trustee to do forthwith or within the time stated in the order anything which he has refused or neglected to do in compliance with sections 1 to 4, or with the rules made under this Act;
- (f) requiring the executor or trustee to pay into court any funds in his hands and to assign and transfer to the Accountant of the Supreme Court or to a new trustee appointed under clause *g*, any property or securities in his hands or under his control, for any of the purposes mentioned in section 1;
- (g) removing such executor or trustee and appointing some other person to act in his stead;
- (h) directing the issue of an attachment against the executor or trustee to the amount of any property or funds as to which he is in default;
- (i) fixing the costs of the application and directing how and by whom they shall be payable;
- (j) giving such directions as to the future investment, disposition and application of any such property, funds or moneys as he may deem just

Order—contents of.

and best calculated to carry out the intentions of the testator or donor;

- (k) imposing such penalty by way of fine, or imprisonment not exceeding twelve months, upon the executor or trustee for any such default or misconduct, or for disobedience to any order made under this section;
- (l) appointing an executor or trustee in place of any executor or trustee who has died, or has ceased to act, or has been removed, or has gone out of Ontario, notwithstanding that the will or other instrument creating the trust confers the power to make such an appointment upon another executor or trustee or upon any other person. R.S.O. 1927, c. 152, s. 5.

Rules.

6.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may make rules,—

- (a) prescribing forms of notices and returns to be made under this Act;
- (b) respecting the practice and procedure upon passing the accounts of an executor or trustee under this Act and the tariff of fees and costs to be applicable thereto;
- (c) requiring returns to be made by any such executor or trustee to any department of the Government and the form of such returns;
- (d) regulating the practice and procedure upon any application under section 5;
- (e) generally for the better carrying out of the provisions of this Act.

(2) Repealed, 1941, c. 55, s. 5.

Practice.

(3) Except as otherwise provided by the rules, the practice and procedure of the Supreme Court and of the surrogate courts shall respectively apply to proceedings under this Act.

When  
surrogate  
registrar  
to transmit  
copy of  
will to  
Public  
Trustee.

(4) Where an application is made for letters probate of any will or other testamentary instrument whereby real or personal property or any right or interest therein or proceeds therefrom are given to or vested in any person as executor or administrator for any religious, educa-



tional, charitable or other purpose or are to be applied by him to or for any such purpose, the surrogate registrar shall transmit a copy of such will or other instrument to the Public Trustee.

(5) Where an action or other proceeding is brought to set aside, vary or construe any such will or other instrument, written notice thereof shall be served upon the Public Trustee, and if no one appears as representing the religious, educational, charitable or other public institution, or if there is no named beneficiary, or a discretion is given to the executor or trustee as to a choice of beneficiaries, the Public Trustee may intervene in such proceedings and shall have the right to object or consent and to be heard upon any argument as a party to such action or proceeding. R.S.O. 1927, c. 152, s. 6.

Notice of action to set aside will to be served on Public Trustee.

7. This Act shall apply notwithstanding any provision in any will or other instrument excluding such application, or giving to an executor or trustee any discretion as to the application of property, funds or the proceeds thereof to religious, educational, charitable or public purposes. R.S.O. 1927, c. 152, s. 7.

Application of Act.

8. This Act shall not apply to or affect or in any way interfere with any right or remedy which any person may have under any other Act or in equity or at common law or otherwise. R.S.O. 1927, c. 152, s. 8.

Other rights and remedies not affected.

## CHAPTER 4

## The Commorientes Act, 1940

Order of  
death pre-  
sumed.

1.—(1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections 2 and 3, for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

Exceptions  
to presump-  
tion,—as to  
Rev. Stat.  
cc. 256, 164;

(2) The provisions of this section shall be read and construed subject to the provisions of section 175 of *The Insurance Act* and of section 36 of *The Wills Act*.

as to  
provisions  
in will.

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be.

## CHAPTER 214

## The Dependants' Relief Act

## 1. In this Act,—

Interpre-  
tation.

- (a) "Applicant" shall mean and include a dependant making application for an allowance under this Act, and in the case of a dependant who is a patient in an institution under *The Mental Hospitals Act*, or who has been declared a mentally incompetent person, the Public Trustee or committee of such person as the case may be, and in the case of an infant, the Official Guardian, applying for an allowance under this Act on behalf of such patient in an institution under *The Mental Hospitals Act*, mentally incompetent person or infant, as the case may be; Rev. Stat. c. 392. "Applicant."
- (b) "Dependant" shall mean and include the wife or husband of a testator, the child of a testator under the age of sixteen years and the child of a testator over that age who through illness or infirmity is unable to earn a livelihood; "Dependant."
- (c) "Executor" shall include administrator with the will annexed; "Executor."
- (d) "Letters probate" shall include letters of administration with the will annexed; 1929, c. 47, s. 2. "Letters probate."
- (e) "Testator" shall mean and include a person who by deed or will or by any other instrument or act so disposes of real or personal property, or any interest therein, that the same will pass at his death to some other person; "Testator."
- (f) "Will" shall mean and include any deed, will, codicil, instrument or other act by which a testator so disposes of real or personal property that the same will pass at his death to some other person. 1930, c. 35, s. 2. "Will."

2.—(1) Where it is made to appear to a judge of the surrogate court of the county or district in which a testator was domiciled at the time of death that such testator has by will so disposed of real or personal property that adequate provision has not been made for Order for allowance for maintenance.

the future maintenance of his dependants or any of them, the judge may make an order charging the whole or any portion of the estate in such proportion and in such manner as to him may seem proper, with payment of an allowance sufficient to provide such maintenance.

Form of allowance.

(2) The allowance may be by way of an amount payable annually or otherwise, or of a lump sum to be paid, or of certain property to be conveyed or assigned either absolutely or for life or for a term of years to the dependant by whom or on whose behalf the application is made, or for his use and benefit as the judge may see fit, and in the event of a conveyance of property being ordered the judge may give all necessary and proper directions for the execution of the conveyance or conveyances, either by the executor or by such other person as the judge may direct, or may grant a vesting order. 1929, c. 47, s. 3.

Who may apply.

Rev. Stat. c. 392.

3. The application for an allowance may be made by a dependant, or in the case of a dependant who is a patient in an institution under *The Mental Hospitals Act*, or has been declared a mentally incompetent person, by the Public Trustee or committee as the case may be, or in the case of a dependant under the age of twenty-one years, by the Official Guardian, or by a guardian appointed by the court. 1929, c. 47, s. 4; 1937, c. 72, s. 19.

Procedure.

4.—(1) The application shall be made to the judge in chambers upon originating notice according to the practice of the court. 1929, c. 47, s. 5(1).

When application to be made.

(2) Where letters probate have been or are applied for by the wife or husband of the testator or a guardian on behalf of minor dependants, an application under this section for an allowance for such wife or husband, or for such minor dependants shall be made at the time of applying for letters probate and in every other case the application shall be made within three months after the death of the testator, but the judge, if he deems it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. 1935, c. 17, s. 2.

Distribution of estate postponed.

(3) After service of notice of the application the executors or trustees under the will shall not proceed with the distribution of the estate except so far as may be necessary for the payment of debts and funeral and testamentary expenses and succession duty until the application is disposed of.



(4) At any time before the hearing of the application a judge of the Supreme Court upon motion on behalf of the trustees or executors, or the applicant, or any other person interested, and upon being satisfied that the total value of the estate of the testator exceeds \$10,000, may by order direct that the application shall be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court and he shall have the like powers and shall proceed in the like manner as in the case of a hearing and determination by the judge of the surrogate court.

Removal  
into  
Supreme  
Court.

(5) Where any person by whom, or on whose behalf, an application for an allowance may be made under this Act is a patient in an institution under *The Mental Hospitals Act*, at the time of the death of the testator, or at any time before the application under this Act is heard and disposed of, notice of the application for letters probate shall be served upon the Public Trustee on behalf of such person, and the time within which the Public Trustee may make an application for an allowance under this Act shall run from the date of the service of such notice.

Persons in  
institutions  
under *Mental  
Hospitals  
Act*.

Rev. Stat.,  
c. 392.

(6) Where any person interested in the estate in respect of which an application is made under this Act is a patient in an institution under *The Mental Hospitals Act*, notice of the application for an allowance shall in every case be served upon the Public Trustee who shall have the right to appear and be heard upon the application. 1929, c. 47, s. 5(3-6); 1937, c. 72, s. 19.

Notice to  
Public  
Trustee.

Rev. Stat.,  
c. 392.

5. The judge shall not make any order until he is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court and every such person shall be entitled to be present and to be heard in person or by counsel at the hearing. 1929, c. 47, s. 6.

Notice to  
parties  
before order.

6. The evidence taken on any such application shall be given orally before the judge and shall be taken down in writing or in shorthand in the same manner as in the case of a trial of an action before a judge without a jury. 1929, c. 47, s. 7.

Evidence  
to be given  
orally.

7. The judge upon the hearing of the application shall enquire into and consider,—

Matters to  
be considered  
by judge.

(a) the circumstances of the testator at the time of death;

- (b) the circumstances of the person on whose behalf the application is made;
- (c) the claims which any other person may have as a dependant of the testator;
- (d) any provision which the testator may have made *inter vivos* for dependants or any dependant;
- (e) any services rendered by dependants to the testator;
- (f) any sum of money or any property provided by a dependant for the testator for the purpose of providing a home or assisting in any business or occupation or for maintenance or medical or hospital expenses; and
- (g) generally any other matters which the judge deems should be fairly taken into account in deciding upon the application. 1929, c. 47, s. 8.

Payment for services rendered to testator.

8. Where the dependant has given personal assistance or the gift or loan of money or real or personal property towards the advancement of the testator in any business or occupation, the judge may in and by his order fix a value in money upon such assistance, or may fix the amount or value in money of any gift or loan so made, and may direct that the applicant shall rank as a creditor upon the estate therefor, in the same manner and to the same extent as a judgment creditor upon a simple contract debt, but except as to the amount so fixed as the value of such assistance or as the amount or value in money of such gift or loan an allowance payable under this Act shall be postponed to the claims of creditors of the estate. 1929, c. 47, s. 9.

When widow disqualified.

9. No order shall be made under this Act in favour of a wife who was living apart from her husband at the time of his death under circumstances which would disentitle her to alimony. 1929, c. 47, s. 10.

Limit of amount or value of allowance.

10. Subject to the provisions of section 8 the amount or value of any allowance ordered to be paid shall not exceed the amount to which the person in whose favour the order is made would have been entitled if the testator had died intestate. 1929, c. 47, s. 11; 1942, c. 34, s. 11.

Costs.

11. The judge may direct that the costs of the application shall be payable out of the estate or otherwise as he may deem just and may fix the amount of the costs

payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any allowance applied for or directed by his order. 1929, c. 47, s. 12.

12. Except as to costs, an appeal shall lie to the Court of Appeal. Appeal.  
of Appeal from any order made under this Act and the Court of Appeal upon such appeal may annul the order or reduce or increase the amount or value of any allowance fixed by the order and the decision of the court upon the appeal shall be final. 1929, c. 47, s. 13.

13. *The Judges' Orders Enforcement Act* shall apply to any order made under this Act. 1929, c. 47, s. 14. Application  
of Rev. Stat.  
c. 123.

## CHAPTER 163

## The Devolution of Estates Act

## INTERPRETATION

Interpreta-  
tion.

"Mentally  
incompetent  
person."

## 1. In this Act,—

(a) "Mentally incompetent person" shall mean a person,—

(i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or

(ii) who is suffering from such a disorder of the mind,

that he requires care, supervision and control for his protection and the protection of his property;

"Mental  
incompe-  
tency."

(b) "Mental incompetency" shall mean the condition of mind of a mentally incompetent person;

"Personal  
representa-  
tive."

(c) "Personal representative" shall mean and include an executor, an administrator, and an administrator with the will annexed. R.S.O. 1927, c. 148, s. 1; 1937, c. 18, s. 2.

Devolution  
to personal  
representa-  
tive of  
deceased.

2.—(1) All real and personal property which is vested in any person without a right in any other person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve to and become vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto and, subject to the payment of his debts, and so far as such property is not disposed of by deed, will, contract or other effectual disposition, the same shall be administered, dealt with and distributed as if it were personal property not so disposed of.

Idem  
where under  
appointment.

(2) This section shall apply to property over which a person executes by will a general power of appointment as if it were property vested in him.

Exceptions.

(3) This section shall not apply to estates tail or to the personal property, except chattels real, of any person



who, at the time of his death, is domiciled out of Ontario.  
R.S.O. 1927, c. 148, s. 2.

### *Administration of Real Property*

3. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealings with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate shall apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it shall not be lawful for some or one only of several joint personal representatives without the authority of the Supreme Court or a judge thereof to sell or transfer real property. R.S.O. 1927, c. 148, s. 3.

Application of enactments as to probate, etc.

Imp. Act 60 and 61 V. c. 65, s. 2(2).

Exception.

4. Subject to the other provisions of this Act in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section shall alter or affect as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1927, c. 148, s. 4.

Real and personal property assimilated in matters of administration.

Imp. Act 60 and 61 V. c. 65, s. 2(3).

### *Payment of Debts out of Residue*

5. Subject to the provisions of section 37 of *The Wills Act* the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except so far as a contrary intention appears from his will or any codicil thereto, be applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1927, c. 148, s. 5.

Payment of debts out of residuary estate.

Rev. Stat. c. 164.

6. When any part of the real property of a deceased person vests in his personal representative under this Act such personal representative, in the interpretation of any

How far personal representatives to be deemed "heirs."

Act of this Legislature, or in the construction of any instrument to which the deceased was a party, or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears, but nothing in this section shall affect the beneficial right to any property, or the construction of words of limitation of any estate in or by any deed, will or other instrument. R.S.O. 1927, c. 148, s. 6.

*Mortgages, Trust Estates and Dower*

Trust estates and interests of mortgages.

Imp. Act 44 and 45 V. c. 41, s. 30.

7. Where an estate or interest of inheritance in real property is vested on any trust or by way of mortgage in any person solely the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as if the same were personal estate vesting in him and, accordingly, all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with the same shall belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if the same were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1927, c. 148, s. 7.

Saving as to dower and right of election.

8.—(1) Nothing in this Act shall take away a widow's right to dower; but a widow may by deed or instrument in writing, attested by at least one witness, elect to take her interest under this Act in her husband's undisposed of real property in lieu of all claim to dower in respect of the real property of which her husband was at any time seised, or to which at the time of his death he was beneficially entitled, and unless she so elects she shall not be entitled to share in the undisposed of real property.

Idem.

(2) The personal representative of the deceased may, by notice in writing, require his widow to make her election, and if she fails to execute and deliver a deed or instrument of election to him within six months after the service of the notice she shall be deemed to have elected to take her dower. R.S.O. 1927, c. 148, s. 8(1, 2).

Where widow under disability.

(3) Where the widow is an infant or a mentally incompetent person the right of election may be exercised

on her behalf by the Official Guardian with the approval of a judge of the Supreme Court or by some person authorized by a judge of the Supreme Court to exercise it, and the Official Guardian or the person so authorized may, for and in the name of the widow, give all notices and do all acts necessary or incidental to the exercise of such right. R.S.O. 1927, c. 148, s. 8(3); 1937, c. 18, s. 3.

(4) Where the widow is a patient in an institution within the meaning of *The Mental Hospitals Act*, and the Public Trustee is committee of her estate, he shall be entitled to exercise on her behalf the power of election conferred by this section. 1930, c. 21, s. 11(1).

Where widow patient in mental hospital.

Rev. Stat. c. 392.

9.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property it shall be sufficient, for the purposes of an action, for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act, to such property or the proceeds thereof be made defendant to such action, and it shall not be necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it shall be otherwise ordered by the court in which the action is brought or by a judge thereof, but if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor he shall be made a party to the action.

Who to be defendants in action for foreclosure where no personal representative of mortgagor.

(2) In subsection 1 the word "mortgagor" shall include the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1927, c. 148, s. 9.

"Mortgagor" meaning of.

10.—(1) Where the personal representative desires to sell any real property devolving upon him free from curtesy or dower he may apply to a judge of the Supreme Court, who may, in a summary way, and upon notice, to be served personally unless the judge otherwise directs, order that the same shall be sold free from the right of the tenant by the curtesy or dowress, and in making such order regard shall be had to the interests of all parties.

Application for order allowing sale free of dower or curtesy.

(2) If a sale free from such curtesy or dower is ordered all the right and interest of such tenant by the curtesy or dowress shall pass thereby, and no conveyance, or release thereof to the purchaser shall be required, and

Effect.



the purchaser, his heirs and assigns, shall hold the real property freed and discharged from the estate or interest of such tenant by the curtesy or dowress.

Payment in satisfaction of dower or curtesy.

(3) The judge may direct the payment of such sum in gross out of the purchase money to the person entitled to curtesy or dower as he may deem, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest, or may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof, as he may deem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as he may deem necessary. R.S.O. 1927, c. 148, s. 10.

Widow's preferential share where estate does not exceed \$5,000.

11.—(1) The real and personal property of every man dying intestate and leaving a widow, whether or not he leaves issue, shall, where the net value of such real and personal property does not exceed \$5,000, belong to his widow absolutely and exclusively.

Where estate exceeds \$5,000.

(2) Where the net value exceeds \$5,000 the widow shall be entitled to \$5,000 part thereof, absolutely and exclusively, and shall have charge thereon for such sum with interest thereon from the date of the death of the intestate at four per centum per annum until payment.

Widow's share in remainder of estate.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$5,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property, and this section had not been enacted. 1941, c. 19, s. 1.

Where estate consists of real property.

(4) Where the estate consists in whole or in part of real property this section shall apply only if the widow elects under section 8 to take an interest in her husband's undisposed of real property in lieu of dower.

"Net Value" meaning of.

(5) In this section "net value" shall mean the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1927, c. 148, s. 11.

Vesting of real estate not disposed of within three years.

#### VESTING OF ESTATE AND CAUTIONS

12.—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially en-



titled thereto, under the provisions of section 20, by the personal representative within three years after the death of the deceased shall, subject to *The Land Titles Act* in the case of land registered under that Act, and subject to subsections 6 and 7 of section 56 of *The Registry Act*, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, be thenceforward vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative unless such personal representative, if any, has registered, in the proper registry or land titles office, a caution (Form 1) under his hand, and if such caution is so registered such real property of the part thereof mentioned therein shall not be so vested for three years from the time of registration of such caution or of the last caution if more than one are registered. R.S.O. 1927, c. 148, s. 12(1); 1931, c. 32, s. 2(1); 1933, c. 59, s. 16(1). Rev. Stat. cc. 174, 170. Unless caution registered.

(2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by *The Registry Act*, or *The Land Titles Act*, as the case may be. Verification. Rev. Stat. cc. 170, 174.

(3) Where the caution specified certain parcels of land it shall be effectual as to those parcels only. R.S.O. 1927, c. 148, s. 12(2, 3). Effect.

(4) The personal representative, before the expiration of the three years, may register a certificate (Form 2), withdrawing the caution, or withdrawing the same as to any parcel of land specified in such certificate and, upon registration of the certificate, the property or the parcel specified shall be treated as if the caution had expired. R.S.O. 1927, c. 148, s. 12(4); 1933, c. 59, s. 16(2). Withdrawal of caution.

(5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness (Form 3). Verification.

(6) Before a caution expires it may be re-registered, and so on from time to time as long as the personal representative deems it necessary, and every caution shall continue in force for three years from the time of its registration or re-registration. R.S.O. 1927, c. 148, s. 12(5, 6); 1933, c. 59, s. 16(3). Renewal of caution.

(7) Notwithstanding anything contained in subsection 1 hereof, real property, devolving by reason of any will which has not been proved or registered or by reason of any intestacy in respect of which letters of administration Real property not to vest until statement under Rev. Stat. c. 26 filed.

have not been granted, shall not vest at the expiration of three years after the death of the deceased in the persons beneficially entitled thereto under such will or intestacy or their assigns as in that subsection provided unless and until a statement similar to that required by section 19 of *The Succession Duty Act* has been filed either with the Treasurer of Ontario or with the registrar of the surrogate court of the county or district where the deceased had his fixed place of abode or where such real property or part thereof is situate. R.S.O. 1927, c. 148, s. 12(7); 1931, c. 32, s. 2(2).

Ordinary  
rights of  
executors,  
etc.,  
preserved.

Rev. Stat.  
c. 165.

Registration  
of caution  
after three  
years from  
death of  
testator.

13. Nothing in section 12 shall derogate from any right possessed by an executor or administrator with the will annexed under a will or under *The Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1927, c. 148, s. 13.

14.—(1) Where a personal representative has not registered a caution within the proper time after the death of the deceased, or has not re-registered a caution within the proper time, he may register or re-register the caution, as the case may be, provided he registers therewith,—

- (a) the affidavit of execution;
- (b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased or the part thereof mentioned in the caution, under his powers and in fulfilment of his duties, and as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and if so which of them, are infants or mentally incompetent persons;
- (c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and mentally incompetent person whose property or interest would be affected; and an affidavit verifying such consent; or
- (d) in the absence and in lieu of such consent an order of a judge of the Supreme Court or of the county or district court of the county or district wherein the property or some part thereof is situate, or the certificate of the Official Guardian authorizing the caution to be registered, or re-registered, which order or certificate the judge or Official Guardian may make with or without notice on

such evidence as satisfies him of the propriety of permitting the caution to be registered or re-registered, and the order or certificate to be registered shall not require verification and shall not be rendered null by any defect of form or otherwise. R.S.O. 1927, c. 148, s. 14(1); 1937, c. 18, s. 3.

(2) This section shall extend to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered.

Application  
of this  
section.

(3) Where a caution is registered or re-registered, under the authority of this section, it shall have the same effect as a caution registered within the proper time after the death of the deceased and of vesting or re-vesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through any person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or re-registered a caution, if his real property is afterwards sold by the personal representative.

Effect of such  
registration.

(4) Where there are two or more personal representatives it shall be sufficient if any caution or the affidavit mentioned in clause *b* of subsection 1 is signed or made by one of such personal representatives. R.S.O. 1927, c. 148, s. 14(2-4).

Signature  
to caution.

15. Where a caution has been registered or re-registered under the authority of any enactment repealed and not re-enacted by this Act and is still in force, such caution shall have the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 12. R.S.O. 1927, c. 148, s. 15.

Effect of  
repealing  
enactment.

16. Any person beneficially entitled to any real property affected by the registration or re-registration of a caution may apply to a judge of the Supreme Court to vacate such registration or re-registration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be

Vacating  
caution.



delayed, may order that such registration or re-registration be vacated as to such property, and every caution, the registration or re-registration of which is so vacated, shall thereafter cease to operate. R.S.O. 1927, c. 148, s. 16.

Land vesting  
in two or  
more persons.

17. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they shall take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the provisions of the will of the deceased. R.S.O. 1927, c. 148, s. 17.

#### POWERS OF PERSONAL REPRESENTATIVE

Sales where  
infants inter-  
ested.

18.—(1) Where an infant is interested in real property which but for this Act would not devolve on the personal representative, no sale or conveyance shall be valid under this Act without the written approval of the Official Guardian appointed under *The Judicature Act*, or, in the absence of such consent or approval, without an order of a judge of the Supreme Court.

Rev. Stat.  
c. 100.

Local guar-  
dians.

(2) The Supreme Court may appoint the local judge of any county or district or the local master therein, as local guardian of infants, in such county or district during the pleasure of the Court, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian shall be subject to such rules as the Supreme Court may make in regard to their authority and duties under this Act. R.S.O. 1927, c. 148, s. 18.

Power of  
personal  
representa-  
tive over real  
property.

19. Except as herein otherwise provided the personal representative of a deceased person shall have power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities, and obligations, as if the same were personal property vested in him. R.S.O. 1927, c. 148, s. 19.

Powers of  
executors  
and adminis-  
trators as to  
selling and  
conveying  
real estate.

20.—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts, but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case shall it be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only. R.S.O. 1927, c. 148, s. 20(1).



(2) Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Official Guardian acting on behalf of an infant or mentally incompetent person, no sale of any such real property made for the purpose of distribution only shall be valid as respects any person beneficially entitled thereto unless he concurs therein; but where a mentally incompetent person is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of such deceased person and the persons beneficially interested therein, approve such sale on behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian shall be valid and binding upon such mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian shall have the same powers and duties as he has in the case of infants, and provided also that in any case the Supreme Court or a judge thereof may dispense with the concurrence of the persons beneficially entitled or any or either of them. R.S.O. 1927, c. 148, s. 20(2); 1931, c. 32, s. 3; 1937, c. 18, s. 3; 1940, c. 28, s. 11.

Concurrence of heirs and devisees.

Proviso as to mentally incompetent persons and non-concurring heirs and devisees.

(3) The personal representative shall also have power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants or mentally incompetent persons, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein. R.S.O. 1927, c. 148, s. 20(3); 1937, c. 18, s. 3.

Powers of executors and administrators as to dividing estate among persons entitled.

(4) Where the person beneficially entitled is a patient in an institution within the meaning of *The Mental Hospitals Act*, and the Public Trustee is committee of his estate, the concurrence and approval required by subsections 2 and 3 may be given by the Public Trustee on behalf of such patient. 1930, c. 21, s. 11(2).

Concurrence where person is a patient in a mental hospital.

Rev. Stat. c. 392.

(5) Upon the application of the personal representative or of any person beneficially entitled the Supreme Court or a judge thereof may before the expiration of three years from the death of the deceased, direct the

Distribution by order of Court within three years from death.

personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Exercise of power of division without concurrence.

(6) The power of division conferred by subsection 3 may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection 2. R.S.O. 1927, c. 148, s. 20(4, 5).

Sections 19 and 20 not to apply to administrators of personal estate only.

Provisions as to executor who has not obtained probate.

(7) Section 19 and this section shall not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and shall not derogate from any right possessed by a personal representative independently of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will unless with the approval of the Supreme Court or a judge thereof. R.S.O. 1927, c. 148, s. 20(7).

Conveyance by personal representative without an order.

(8) The powers of a personal representative under subsection 2, 3 or 6 have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of the Supreme Court or a judge thereof, provided, however, that,—

Real property conveyed, etc., by personal representative to remain liable for debts.

(a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value; but in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, his assignee or successor to enforce the claim and a *lis pendens* or a caution has, before such expiry been registered against the property, and that

Limitation as to purchaser in good faith.

Relief over.

(b) although such liability has applied and shall apply as aforesaid, in respect of real property, so conveyed, divided or distributed, any such purchaser, in good faith and for value shall be deemed to

have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative, and that

- (c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, the provisions of subsection 2 of section 23 and of section 25 shall apply as if such real property had become vested in the person beneficially entitled thereto under section 12. R.S.O. 1927, c. 148, s. 20(8); 1930, c. 21, s. 11(4). Where no *lis pendens* or caution.

21. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative which has been made without the written approval of the Official Guardian, where such approval is required, shall be a confirmation of the sale as to him. R.S.O. 1927, c. 148, s. 21. Effect of accepting share of purchase money.

22. A person purchasing in good faith and for value real property from the personal representative in manner authorized by this Act shall be entitled to hold the same freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and shall not be bound to see to the application of the purchase money. R.S.O. 1927, c. 148, s. 22. Protection of bona fide purchasers from personal representatives.

23.—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of the Supreme Court or a judge thereof, shall be entitled to hold the same freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will; but nothing in this section shall affect the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative. Protection of bona fide purchasers from beneficiary.

(2) Real property which becomes vested in the person beneficially entitled thereto, under section 12, shall continue to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in Extent to which real property remains liable to debts and personal liability of beneficiary.



any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he shall be personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1927, c. 148, s. 23.

Powers of personal representative as to leasing and mortgaging.

24.—(1) The powers of a personal representative under this Act shall include,—

- (a) power to lease from year to year while the real property remains vested in him;
- (b) power with the approval of the majority of the persons beneficially entitled thereto, representing together not less than one-half of all the interests therein including the Official Guardian acting on behalf of an infant or mentally incompetent person, to lease for a longer term;
- (c) power to mortgage for the payment of debts. R.S.O. 1927, c. 148, s. 24(1); 1931, c. 32, s. 4; 1933, c. 59, s. 16(4); 1937, c. 18, s. 3.

Approval of Official Guardian.

(2) The written approval of the Official Guardian to mortgaging shall be required where it would be required if the real property were being sold. R.S.O. 1927, c. 148, s. 24(2).

Rights of purchaser in good faith against claims of creditors.

25.—(1) A purchaser in good faith and for value of real property of a deceased owner which has become vested under the provisions of section 12 in a person beneficially entitled thereto, shall be entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Liability of personal representative.

(2) Nothing in subsection 1 shall affect the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1927, c. 148, s. 25.

#### DISTRIBUTION OF ESTATE

Effect of illegitimacy.

26. An illegitimate child or relative shall not share under any of the provisions of this Act. R.S.O. 1927, c. 148, s. 26.

Rev. Stat. c. 216.

NOTE.—*See Legitimation Act.*



*Advancement*

27.—(1) If any child of an intestate has been advanced by him by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of such intestate to be distributed under the provisions of this Act, and if such advancement is equal to or greater than the amount of the share which such child would be entitled to receive of the real and personal property of the deceased, as so reckoned, then such child and his descendants shall be excluded from any share in the real and personal property of the intestate.

Cases of children who have been advanced by settlement, etc.

(2) If such advancement is less than such share such child and his descendants shall be entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in such real and personal property and advancement to be equal, as nearly as can be estimated.

If such advancement be not equal.

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing; otherwise such value shall be estimated according to the value of the property when given.

Value of property advanced, how estimated.

(4) The maintaining or educating, or the giving of money to a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1927, c. 148, s. 27.

Education etc., not advancement.

*Intestate Married Women*

28.—(1) The real and personal property, whether separate or otherwise, of a married woman in respect of which she dies intestate, shall be distributed as follows: one-third to her husband if she leaves issue, and one-half if she leaves no issue, and subject thereto shall devolve as if her husband had predeceased her.

Distribution of property of married woman dying intestate.

(2) A husband who, if this Act had not been passed, would be entitled to an interest as tenant by the curtesy in real property of his wife, may, by deed or instrument in writing executed, and attested by at least one witness, and delivered to the personal representative, if any, or if there is none, deposited in the office of the surrogate clerk at Toronto, within six months after his wife's death,

Saving as to husband's interest in property of wife.

elect to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he shall be entitled to no further interest thereunder. R.S.O. 1927, c. 148, s. 28.

*Distribution of Personalty*

Distribution  
of personal  
estate.

29. Except as in this Act is otherwise provided the personal property of a person dying intestate shall be distributed as follows, that is to say: one-third to the wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent such children in case any of them have died in his life-time, and if there are no children or any legal representatives of them then two-thirds of the personal property shall be allotted to the wife, and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them, and for the purpose of this section the father and the mother and the brothers and sisters of the intestate shall be deemed of equal degree; but there shall be no representations admitted among collaterals after brothers' and sisters' children, and if there is no wife then all such personal property shall be distributed equally among the children, and if there is no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner; provided that if there is only one child or legal representatives of only one child the personal property of a person dying intestate shall be distributed as follows, that is to say: one-half to the wife of the intestate and the other half to such child or the legal representatives of such child. R.S.O. 1927, c. 148, s. 29; 1929, c. 42, s. 2(1, 2); 1941, c. 19, s. 2.

Children  
share with  
mother.

30. If, after the death of a father, any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in section 29 to the contrary notwithstanding. R.S.O. 1927, c. 148, s. 30.

Distribution  
not to be  
made for  
one year.

31. Subject to the provisions of section 51 of *The Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share shall be allotted shall, if any debt owing by the intestate shall be afterwards sued

Rev. Stat.  
c. 165.

for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reasons of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1927, c. 148, s. 31.

#### GENERAL PROVISIONS

32. Rules regulating the practice and procedure to be followed in all proceedings under this Act, and, a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings, may be made by the Rules Committee, subject to the approval of the Lieutenant-Governor in Council. R.S.O. 1927, c. 148, s. 32; 1941, c. 19, s. 3. Rules of procedure.

33. The Lieutenant-Governor in Council may appoint a deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1927, c. 148, s. 33. Appointment of deputy Official Guardian pro tem.

34. Affidavits may be used in proceedings taken under this Act. R.S.O. 1927, c. 148, s. 34. Affidavits.

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#### FORM 1

(Section 12)

#### THE DEVOLUTION OF ESTATES ACT

I, \_\_\_\_\_, executor of (or *administrator, with the will annexed of, or administrator of*) \_\_\_\_\_, who died on or about the \_\_\_\_\_ day \_\_\_\_\_, 19\_\_\_\_, certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or *administrator*) to sell the real property of the said \_\_\_\_\_ or part thereof (or *the caution may specify any particular part or parcel*) and of this all persons concerned are hereby required to take notice.

R.S.O. 1927, c. 148, Form 1.

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#### FORM 2

(Section 12)

#### THE DEVOLUTION OF ESTATES ACT

I, \_\_\_\_\_, executor (or *administrator*) of \_\_\_\_\_ hereby withdraw the caution heretofore registered with respect to the real property of \_\_\_\_\_ (or *as the case may be*).

R.S.O. 1927, c. 148, Form 2.

## FORM 3

(Section 12)

## THE DEVOLUTION OF ESTATES ACT

I, \_\_\_\_\_, of, etc., make oath and say I am well acquainted with \_\_\_\_\_ named in the above certificate; that I was present and did see the said certificate signed by the said \_\_\_\_\_; that I am a subscribing witness to the said certificate and I believe the said \_\_\_\_\_ is the person who registered the caution referred to in the said certificate.

Sworn, etc.

R.S.O. 1927, c. 148, Form 3.



## CHAPTER 112

## The Dower Act

## PART I

## RIGHT TO DOWER

1. A widow, on the death of her husband, may tarry in his chief house for forty days after his death, within which time her dower shall be assigned her, if it has not been assigned her before, and in the meantime she shall have her reasonable maintenance, and for her dower shall be assigned to her the third part of all the lands of her husband, whereof he was seized at any time during coverture, except such thereof as he was so seized of in trust for another. R.S.O. 1927, c. 100, s. 1.

Dower and  
quarantine.

25 Edw. I,  
c. 7 Magna  
Charta.

2. A widow wrongfully deforced of dower or quarantine, may recover damages for such forcement against the deforcer. R.S.O. 1927, c. 100, s. 2.

Damages for  
deforcement.  
20 Hen. III,  
(Stat. of  
Merton,) c. (I).

3. Where a husband dies beneficially entitled to any land for an interest which does not entitle his widow to dower at common law, and such interest, whether wholly equitable or partly legal and partly equitable, is, or is equal to an estate of inheritance in possession, other than an estate in joint tenancy, his widow shall be entitled to dower out of such land. R.S.O. 1927, c. 100, s. 3.

Dower out  
of equitable  
estates.

4. Where a husband has been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband did not recover possession thereof, but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. R.S.O. 1927, c. 100, s. 4.

Dower where  
husband had  
a right of  
entry.

## WHERE NO DOWER

5. Dower shall not be recoverable out of any separate and distinct lot, tract, or parcel of land which, at the time of the alienation by the husband or at the time of his death, if he died seized thereof, was in a state of nature, and unimproved by clearing, fencing or otherwise for the purposes of cultivation or occupation; but this shall not

Land in  
state of  
nature.

restrict or diminish the right to have woodland assigned to the dowress under section 29, from which it shall be lawful for her to take firewood necessary for her own use, and timber for fencing the other portions of the same lot, tract, or parcel assigned to her. R.S.O. 1927, c. 100, s. 5.

Mining land.

6. No dower shall be recoverable out of any land which has been heretofore or shall be hereafter granted by the Crown as mining land in case such land is, on or after the 31st day of December, 1897, granted or conveyed to the husband of the person claiming dower and he does not die entitled thereto. R.S.O. 1927, c. 100, s. 6.

Land dedicated for streets.

7. Land dedicated by the owner thereof for a street or public highway shall not be subject to any claim for dower by the wife of the person by whom the same was dedicated. R.S.O. 1927, c. 100, s. 7.

Dower forfeited by elopement with adulterer.

8. Where a wife willingly leaves her husband and goes away, and continues with her adulterer, she shall be barred forever of her action to demand her dower that she ought to have of her husband's land, unless her husband willingly and without coercion be reconciled to her and suffer her to dwell with him; in which case she shall be restored to her action. R.S.O. 1927, c. 100, s. 8.

13 Edw. 1, (Stat. of Westminster 2nd), c. 34.

#### BAR OF DOWER

Effect of bar of dower in mortgages.

9.—(1) No bar of dower contained in any mortgage or other instrument intended to have the effect of a mortgage or other security upon land shall operate to bar such dower to any greater extent than shall be necessary to give full effect to the rights of the mortgagee or grantee under such instrument.

Wife's right to dower in surplus of purchase money arising from sale under mortgage.

(2) Where land comprised in such mortgage or other instrument is sold under any power of sale contained therein or under any legal process, the wife of the mortgagor or grantor who shall have so barred her dower in such land shall be entitled to dower in any surplus of the purchase money arising from such sale which may remain after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land from which such surplus purchase money shall be derived had the same not been sold and except where the mortgage or other instrument is for the purchase money of the land the amount to which she is entitled shall be calculated on the basis of the amount realized from the sale of the land, and not upon the

amount realized from the sale over and above the amount of the mortgage only. R.S.O. 1927, c. 100, s. 9.

(NOTE—As to the right to dower in land subject to *The Land Titles Act* where land acquired subject to a charge, or where owner, after charging land, marries, see, R.S.O., c. 174, s. 46.)

10.—(1) A mortgagee or other person holding any money out of which a married woman shall be dowable under section 9 may pay the same into the Supreme Court to the credit of such married woman and the other persons interested therein. Payment of money into Court.

(2) The Court may, on a summary application, make such order as may be deemed just for securing the right of dower of a married woman in any money out of which she shall be dowable. R.S.O. 1927, c. 100, s. 10. Order for securing right of dower.

11. A widow shall not be entitled to take her intrest in money under section 9, and, in addition thereto, a share of the money as personal estate. R.S.O. 1927, c. 100, s. 11. Widow's election.

12. A person whose wife is of unsound mind and confined in an institution under *The Mental Hospitals Act* at the time he becomes the owner of any land, may at any time while his wife is so confined sell and convey or mortgage such land, freed and discharged of any claim of his wife for dower therein. R.S.O. 1927, c. 100, s. 12. Sale, etc., free from dower. Rev. Stat., c. 392.

13.—(1) Where the wife of an owner of land,— Where wife living apart from her husband.

(a) has been living apart from him for two years under such circumstances as disentitle her to alimony; or

(b) is of unsound mind and confined as such in a hospital for mentally ill, mentally defective or epileptic persons,

and such owner is desirous of selling or mortgaging the land free from dower, a judge of the Supreme Court, or a judge of the county or district court of the county or district in which such owner resides, on application by him, may, by an order to be made in a summary way, upon such evidence as to the judge may seem meet, and upon notice to be served personally, dispense with the concurrence of the wife for the purpose of barring her dower.

(2) Where for any reason notice cannot be served personally the order may be made after notice has been Service of notice of application to judge.



served upon the Public Trustee and in such other manner as the judge may direct.

Order—form  
and contents  
of.

(3) The judge shall, unless the wife has been so living apart from her husband under such circumstances as disentitle her to dower, ascertain and state in the order the value of such dower, and shall by the order direct that the amount thereof shall be paid into court or shall remain a charge upon the land or be secured otherwise for the benefit of the wife or be paid or applied for her benefit as he may deem best.

Conveyance  
or mortgage  
after order.

(4) After the making of the order a conveyance or mortgage by the owner, expressed to be free from his wife's dower, shall, subject to the terms and conditions mentioned in the order, be sufficient to bar her right thereto.

When agree-  
ment for sale  
executed by  
husband or  
part of pur-  
chase money  
retained.

(5) This section shall extend to any case in which an agreement for sale has been made, or a conveyance executed by the husband, and part of the purchase money retained by the purchaser on account of dower or an indemnity given against such dower, and in any such case the application may be made by any person interested in the land, the purchase money retained or the indemnity.

Where wife  
is an infant  
or of un-  
sound mind.

Rev. Stat.,  
c. 392.

(6) Where the wife is an infant or a person of unsound mind notice of the application shall be served on the Official Guardian, except where such person is confined in an institution under *The Mental Hospitals Act*, in which case the notice shall only be served on the Public Trustee. R.S.O. 1927, c. 100, s. 13 (1-6).

Fee.

(7) On every such application a fee of \$5 shall be payable in law stamps, and no other fee or charge of any kind shall be payable in respect thereof, except that for filing the affidavits and papers the proper officer shall charge the same fees as for filing papers in other cases, which in the Supreme Court shall be paid in law stamps. R.S.O. 1927, c. 100, s. 13(7); 1936, c. 56, s. 6.

Application  
where wife is  
mentally ill  
but not  
confined in  
an hospital.

14.—(1) Where the gaol surgeon of a county or district in which a married woman, who is not confined in a hospital for mentally ill, resides, and another medical practitioner to be named by the judge, each certifies (Form 1) that he has personally examined such married woman and that he is of opinion that she is mentally ill, and a judge of the county or district court of the county or district in which such married woman resides, or a judge of the Supreme Court, also certifies (Form 2) that



he has personally examined such married woman, and that from such examination and from the evidence adduced before him, if he thinks it expedient to hear evidence, he is of opinion that such married woman is mentally ill, the judge may make the like order as by section 13 is authorized.

(2) The examination and certificates required by this section shall not be acted upon by the judge unless all are made within a period of one month, and the application shall not be entertained unless it is made within one month after the day upon which the last of such examinations took place. R.S.O. 1927, c. 100, s. 14.

Interval between examination and application.

15. Where a judge makes an order under either section 13 or section 14, with reference to any parcel of land, he may afterwards make orders in respect of other sales or mortgages by the husband, on the evidence adduced on the first application, and on other evidence which may satisfy him of the continued mental illness of the wife. R.S.O. 1927, c. 100, s. 15.

Subsequent orders by judge as to other sales or mortgages.

16. Where the owner of land has become bankrupt and it is sought to sell such lands in order to wind up his estate, and the wife of such owner will not release her dower, the trustee or assignee in bankruptcy may apply to a judge of the Supreme Court or to a judge of the county or district court of the county or district in which the lands are situate, for an order enabling him to convey the land free from the dower of such wife and the order may be made subject to the like conditions and upon the like proceedings as are provided for in section 13. 1928, c. 21, s. 6.

Bar of dower on sale in bankruptcy.

17.—(1) Where the wife of an owner of land has been living apart from her husband for five years or more, and the husband sells and conveys, or has sold and conveyed the land, or mortgages, or has mortgaged the same, the wife not having joined in the conveyance or mortgage, and the purchaser or mortgagee not having had notice that the grantor or mortgagor had a wife living at the time, such purchaser or mortgagee may during the lifetime of the grantor or mortgagor apply to a judge of the Supreme Court or to a judge of the county or district court of the county or district in which he resides for an order enabling him to convey or mortgage the land free from the dower of such wife, which may be obtained subject to the like conditions, and by the like proceedings, as are provided by section 13.

Where wife of vendor or mortgagor has been living apart from husband for five years.

Relief of persons claiming under grantee or mortgagee.

(2) A person claiming under the grantee or mortgagee shall be entitled to apply in like manner and obtain like relief founded on the right which such grantee or mortgagee had, or on the applicant's own interest having been acquired by purchase for value in good faith without notice that such owner had a wife at the time of the conveyance or mortgage. R.S.O. 1927, c. 100, s. 16.

Registration of order.

18.—(1) An order under any of the preceding sections may be made in duplicate, or in as many parts as are necessary, and shall be signed by the judge, and may be registered in the registry office of the registry division wherein the land to which the same relates is situate, upon its production and deposit, without any proof thereof, and such registration may take place either before or after the execution of the conveyance or mortgage made in pursuance of such order.

Order may be indorsed on deed.

(2) The order may be indorsed or written upon the conveyance or mortgage, in which case it shall be registered as part thereof.

Fee for registration of order.

(3) For the registration of the order, including all necessary entries and certificates, the registrar shall be entitled to a fee of \$1, unless the order is indorsed or written upon the conveyance or mortgage, in which case no fee shall be payable in respect of the registration thereof.

Description of land in order when order indorsed on deed.

(4) If the order is indorsed or written upon the conveyance or mortgage the land may be described in the order by reference to the description contained in the conveyance or mortgage. R.S.O. 1927, c. 100, s. 17.

Wife joining in deed without releasing dower.

19. Where a wife has joined or hereafter joins in a conveyance or mortgage purporting to convey or mortgage land, or has signed or signs, otherwise than as a witness, a conveyance or mortgage by which her husband conveys or mortgages or purports to convey or mortgage land, but the conveyance or mortgage contains no words purporting to release her dower or other estate or interest in the land, the conveyance or mortgage shall have the same effect as if it contained a bar of dower by the wife and she thereby barred her dower in the land. R.S.O. 1927, c. 100, s. 18; 1941, c. 55, s. 10.

(NOTE—For right of married women to convey or release dower, see *Married Women's Property Act*, R.S.O., c. 209.)

20. A married woman, under twenty-one years of age, of sound mind may bar her dower in any land by joining with her husband in a deed or conveyance thereof to a purchaser for value, to a mortgage, or by a transfer or charge under the provisions of *The Land Titles Act* in which deed, conveyance, transfer or charge, a release or bar of her dower is contained, and she may in like manner release her dower to any person to whom such land has been previously conveyed. R.S.O. 1927, c. 100, s. 19.

Married women under twenty-one barring dower.

Rev. Stat., c. 174.

## PART II

### ASSIGNMENT OF DOWER

21. The dowress and the tenant of the freehold may, by an instrument under their hands and seals, executed in the presence of two witnesses, agree upon the assignment of dower, or upon a yearly or gross sum of money to be paid in lieu and satisfaction of dower, and the instrument may be registered in the proper registry office by filing the same or a duplicate thereof, verified by the affidavit of one of the subscribing witnesses, and shall entitle the dowress to hold the land so assigned to her against the assignor and all parties claiming through or under him, as tenant for her life, or to distrain for, or to sue for, and recover in any court of competent jurisdiction the yearly or gross sum agreed to be paid to her by the tenant of the freehold, and the instrument so registered shall be a lien upon the land for such yearly or gross sum, and shall be a bar to any action or proceeding by the dowress for dower in the lands mentioned therein. R.S.O. 1927, c. 100, s. 20.

By deed of assignment.

22. Every tenant in possession, who is not also tenant of the freehold, and who is served with a writ of summons in an action for the recovery of dower shall forthwith give notice thereof to his landlord or other person under whom he entered into possession, under the penalty of forfeiting the value of three years' improved rent of the premises in the possession of the tenant, to the person under whom he entered into possession, to be recovered by action in the Supreme Court. R.S.O. 1927, c. 100, s. 21.

Duty of tenant in possession, not also tenant of freehold to notify landlord.

Penalty.

23. In estimating damages for the detention of dower or the yearly value of the land, for the purpose of fixing a yearly sum of money in lieu of an assignment of dower by metes and bounds, the value of permanent improvements made after the alienation of the land by the hus-

Mode of estimating damages for detention of dower, etc.



band, or after the death of the husband, shall not be taken into account; but the damages or yearly value shall be estimated upon the state of the property at the time of such alienation or death, allowing for the general rise, if any, in the price and value of land in the particular locality. R.S.O. 1927, c. 100, s. 22.

#### ASSIGNMENT OF DOWER AFTER JUDGMENT

Appointment of commissioners to admeasure the dower, etc.

24. The sheriff, on receipt of the writ of assignment of dower, shall, by writing under his seal of office, appoint two resident freeholders of his county who are rated upon the assessment roll for real estate of a value not less than \$2,000 each, and each of whom would in other respects be eligible to serve as a juror between the parties named in the writ, and an Ontario land surveyor, to be commissioners to admeasure the dower, and the sheriff shall, in such writing, set out a copy of the writ, and shall name therein a day on or before which the commissioners shall make and return to him a report of their proceedings and determination in the execution of the duty assigned to them. R.S.O. 1927, c. 100, s. 23.

Provision in case of death, etc., of commissioners.

25. In the case of the death or refusal to act of any or all of the commissioners so appointed, the sheriff shall, from time to time, in like manner, appoint another or others to perform the duty of any who may die or refuse to act. R.S.O. 1927, c. 100, s. 24.

Oath of commissioners.

26.—(1) Every commissioner so appointed shall, before entering upon the execution of his duty, take and subscribe an oath in the form following:

Form of oath.

"I, \_\_\_\_\_, do swear that I am not of kin to the plaintiff (*naming her*) or to the defendant (*naming him*), or in any way interested in the land out of which the assignment of dower is to be made by me, and that I will honestly, impartially, and to the best of my skill and ability, execute and perform the duties imposed upon me by the appointment of \_\_\_\_\_ Esquire, Sheriff of the County of \_\_\_\_\_, as a Commissioner for the admeasurement of dower between the plaintiff and the defendant according to law."

Return to sheriff.

(2) The commissioners shall annex to their report the oaths sworn by them, and return them to the sheriff. R.S.O. 1927, c. 100, s. 25.

Powers and liabilities of commissioners.

27. After taking and subscribing such affidavit, the commissioners shall, for all purposes in the fulfilment of the duties by law required of them, be considered officers of the court, and shall be entitled to the same immunities and protection and be subject to the same liabilities



and proceedings as a sheriff in the discharge of his duty.  
R.S.O. 1927, c. 100, s. 26.

28. —(1) If either party desires to produce a witness before the commissioners, such party may sue out a subpoena *ad testificandum* or *duces tecum* from the office in which the action was commenced, commanding the attendance of such witness at the time and place appointed by the commissioners.

Mode of procuring attendance of witnesses before commissioners.

(2) The person so required to attend shall be entitled to be paid the same fees, allowances, and conduct money as if he had been subpoenaed as a witness in an ordinary action. R.S.O. 1927, c. 100, s. 27.

Payment of witness.

29.—(1) It shall be the duty of the commissioners,—

Duties of commissioners.

(a) to admeasure, designate and lay off without delay, by sufficient marks, descriptions, boundaries or monuments, one-third of the land mentioned in the writ, according to the nature of the land, whether meadow, arable, pasture or woodland, being a part of the land mentioned in the writ, and having always due regard to the nature and character of the buildings and erections on such land;

Admeasurement.

(b) to ascertain and determine what permanent improvements have been made upon the land since the death of the plaintiff's husband, or since he alienated the same to a purchaser for value, and if it can be done they shall award the dower out of such part of the land as does not embrace or contain such permanent improvements; but if that cannot be done, they shall deduct either in quantity or value from the portion to be by them allotted or assigned to the plaintiff in proportion to the benefit she may or will derive from the assignment to her as part of her dower of any part of such permanent improvements.

Ascertainment of improvements.

(2) If from peculiar circumstances, such as there being a mill or manufactory upon the land, the commissioners cannot make a fair and just assignment of dower by metes and bounds, they shall assess a yearly sum of money, being as near as may be one-third of the clear yearly rents of the premises, after deducting any rates or assessments payable thereon, and in assessing such yearly sum they shall make allowances and deductions for permanent improvements, as above provided for, and in their report to the sheriff they shall state the amount

Assessment of yearly sum in lieu of dower.

of such yearly sum and set forth all the evidence taken by them in relation to the same.

Evidence  
on oath.

(3) The evidence shall be taken upon oath, which oath any one of the commissioners is hereby authorized to administer and shall be reduced in writing and subscribed by the witness.

Recovery of  
sum  
assessed.

(4) Such yearly sum shall be a lien upon the land mentioned in the writ or upon such specific portion thereof as the commissioners may direct, and the same shall be recoverable by distress as for rent or by action against the tenant of the freehold for the time being.

Report of  
commis-  
sioners.

(5) The report of the commissioners shall be in writing, subscribed by them and directed to the sheriff, and shall contain a full statement of their proceedings, and where the dower is assigned by metes and bounds, shall distinctly point out and describe the same, and the posts, stones or other monuments designating the boundaries, and for the purpose of planting and marking the posts, stones or monuments, the commissioners may, if necessary, employ chain-bearers and labourers. R.S.O. 1927, c. 100, s. 28.

Time for  
report.

30. The sheriff may, in his discretion, upon the request of the commissioners, enlarge the time for making their report for not more than ten days, and he shall, within twenty-four hours after the receipt thereof, indorse thereon the day and hour of the receipt, and he shall then forthwith return the writ, together with the report and all papers annexed thereto, to the office wherein the action was commenced. R.S.O. 1927, c. 100, s. 29.

Return of  
writ with  
report.

Appeal.

31.—(1) Either party, within a month from the filing of the sheriff's return to the writ, or within such further time as the Supreme Court or a judge thereof may allow, may appeal from the report of the commissioners to a judge in Court, upon grounds apparent on the report and papers filed therewith, or may apply to set aside the same, upon other grounds verified by affidavit and set forth in the notice served.

Order of  
Court  
thereon.

(2) The judge may vary or amend the report, or refer the same back to the commissioners for amendment in whole or in part, with such directions as to law or fact as he may deem proper, or he may confirm or set aside the report and may appoint three new commissioners or direct that the sheriff shall do so, and the new commissioners shall have the same powers and perform the same duties as hereinbefore expressed, and the report of the

new commissioners shall be treated as if no other report had been made, and shall be dealt with and proceeded upon accordingly.

(3) If the report is moved against upon the ground of misconduct or fraud on the part of the commissioners, the judge may direct that they be added as parties to the proceeding, and if wilful misconduct or fraud be established the report may be set aside and the commissioners may be adjudged to pay to the parties injured all the costs which have been incurred in respect of proceedings rendered useless by such misconduct or fraud, and all the costs of the proceeding to set aside the report.

Effect of report being appealed from for misconduct, etc.

(4) The appeal or application may be dismissed with or without costs, and the Court may order the party at whose instance, or on whose complaint, the commissioners may have been made parties to pay the commissioners their costs.

Costs of appeal.

(5) If the appeal or application is dismissed, or if the report is not appealed from or moved against within the proper time, the report shall thenceforth be final and conclusive on all parties to the action of dower, and a copy of the report, certified by the registrar under the seal of the Court, may be registered in the proper registry office. R.S.O. 1927, c. 100, s. 30.

Registration of copy of report.

32. After such registration the plaintiff shall be entitled to sue out a writ directed to the proper sheriff, commanding him to put her into possession of the land assigned to her for her dower, and to levy all such costs as have been awarded to her against the defendant. R.S.O. 1927, c. 100, s. 31.

When writ of possession may issue.

33. The commissioners shall each be entitled to receive from the plaintiff the sum of \$5 for each day's attendance, not exceeding two, and the sum of twenty cents for every hundred words for drawing up their report, and may also charge ten cents for every hundred words of each copy furnished by them to either party. R.S.O. 1927, c. 100, s. 32.

Commissioners' fees.

34. The plaintiff shall pay the costs of suing out, and the costs of the commissioners in executing the writ of assignment of dower and making their report, but each party shall pay his own costs of witnesses and of his counsel or solicitor attending before the commissioners. R.S.O. 1927, c. 100, s. 33.

By whom costs to be paid.

(NOTE—As to limitations in the case of claims for dower see *The Limitations Act*, Rev. Stat., c. 118).

FORM 1.

(Section 14)

CERTIFICATE OF MEDICAL PRACTITIONER

I, the undersigned \_\_\_\_\_ a legally qualified Medical Practitioner, Gaol Surgeon of the Gaol of the County (or District) of \_\_\_\_\_ (or as the case may be) residing and practising at \_\_\_\_\_ in the County (or District) of \_\_\_\_\_ of \_\_\_\_\_, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ in the County (or District) of \_\_\_\_\_ I separately from any other Medical Practitioner, personally examined A. B. of the Township of \_\_\_\_\_ in the County of (or District) of \_\_\_\_\_ wife of C. B., of the Township of \_\_\_\_\_ in the County (or District) of \_\_\_\_\_ and I further certify that the said A. B. is mentally ill and that I have formed this opinion upon the following grounds, namely: *(here state the facts upon which the Certificate is based).*

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_.

Witness \_\_\_\_\_ R.S.O. 1927, c. 100, Form 1.

FORM 2.

(Section 14)

CERTIFICATE OF JUDGE

Province of Ontario, }  
County (or District) of \_\_\_\_\_ }  
I, the undersigned, E. F., Judge of the County (or District) Court of the County (or District) of \_\_\_\_\_ do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I personally examined A. B., of the \_\_\_\_\_ of \_\_\_\_\_, wife of C. B., in the County (or District) of \_\_\_\_\_ of \_\_\_\_\_ in the County (or District) of \_\_\_\_\_ and that from such personal examination (and from the evidence of G. H. and J. K. adduced before me, *(if evidence has been taken)*) I am of opinion that the said A. B. is mentally ill.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the County (or District) of \_\_\_\_\_.

R.S.O. 1927, c. 100, Form 2.



## CHAPTER 215

## The Infants Act

## CUSTODY OF INFANTS

1.—(1) The Supreme Court or the surrogate court of the county or district in which the infant resides, upon the application of the father or of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise, as the court may deem just.

Orders as to custody of and right of access to infant, at the instance of father or mother.

(2) The court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the value of the estate, the court deems reasonable. R.S.O. 1927, c. 186, s. 1.

Order as to maintenance.

(3) Where it is made to appear to the judge of the surrogate court of the county or district in which the infant resides in whose favour an order has been made under subsection 2, that default has been made in payment of any sum of money so ordered to be paid, the judge of the surrogate court,—

Enforcement of order.

- (a) may from time to time summon the person in default to explain the default; and
- (b) may, where service of the summons has been proved, and the person in default does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, issue an order for the arrest of such person; and
- (c) may, when an order has been issued, or where the person in default fails to satisfy the judge that such default is due to inability to pay, order and

adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order are sooner paid. 1929, c. 48, s. 2.

Father and mother to be joint guardians.

2.—(1) Unless otherwise ordered by the court, and subject to the provisions of this Act, the father and mother of an infant shall be joint guardians and shall be equally entitled to the custody, control and education of such infant.

(2) Where the parents are not living together or where the parents are divorced or judicially separated, they may enter into a written agreement as to which parent shall have the custody, control and education of such infant, and in the event of the parents failing to agree either parent may apply to the court for its decision. R.S.O. 1927, c. 186, s. 2.

Rules of equity.

3. In questions relating to the custody and education of infants the rules of equity shall prevail. R.S.O. 1927, c. 186, s. 3.

#### INFANT'S REAL ESTATE

When sale or lease of infant's estate may be authorized.

4.—(1) Where an infant is seised, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the same, or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the infant, or that for any cause his interest requires or will be substantially promoted by such disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of such real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate.

Exception.

(2) No sale, mortgage, lease, or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use.

Authorizing exchange of unproductive for productive property.

(3) The court, if it is of opinion that such course is for the benefit of the infant or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in

fee or for a term of years or otherwise by such infant, and which are unproductive, for lands which are productive, but no such exchange of lands shall be made contrary to the provisions of a will or conveyance.

(4) Every exchange of lands made pursuant to sub-section 3 shall be conducted and confirmed in such manner as is required by the rules and practice of the Supreme Court in the case of the sale or other disposition of the lands of infants. R.S.O. 1927, c. 186, s. 4. Procedure.

5. The Supreme Court may sanction the surrender of any lease to which an infant is entitled and if deemed expedient the acceptance of a new lease in lieu thereof. R.S.O. 1927, c. 186, s. 5. Surrender of lease.

6. Where an infant is entitled to lands subject to a lease containing a covenant for renewal the Supreme Court may sanction the execution of a new lease in accordance with the provisions of the covenant or with such modification as may be deemed expedient. R.S.O. 1927, c. 186, s. 6. Renewal of lease.

7. Every surrender and lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place the same was made or accepted had been of full age and had made or accepted the same. R.S.O. 1927, c. 186, s. 7. Validity of dispositions. Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 31.

8. Where it is deemed convenient the court may direct some other person to execute any conveyance, mortgage, lease or other document in the place of the infant and every such conveyance, mortgage, lease or other document whether executed by the infant or by such other person, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. R.S.O. 1927, c. 186, s. 8. When a substitute may be appointed to convey. Validity of such conveyance.

9. Where an infant is seised of the reversion of land subject to a lease, and such lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf of the infant, consent to any assignment or transfer of such leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. R.S.O. 1927, c. 186, s. 9. Consent to assignment of lease by infant.

10. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower a gross sum which the court deems reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made Compensation to owners of particular estates.



payable to the person entitled to dower during her life, the court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower, as upon the principles applicable to life annuities may be deemed a reasonable satisfaction for such dower; or may direct the payment to the person entitled to dower of an annual sum or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary. R.S.O. 1927, c. 186, s. 10.

(NOTE.—*As to conveyance by infants where land is sold by direction of the court for payment of debts of ancestor, see The Trustee Act, Rev. Stat. c. 165.*)

Order for maintenance where power of appointment in favour of children.

11. Where, by a will or other instrument, property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may, on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. R.S.O. 1927, c. 186, s. 11.

Order for application of dividends of stock for maintenance of infants.

Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 32.

12.—(1) The Supreme Court may order and direct the sale of any personal property of an infant including any stock or bonds to which he is entitled and may direct any money belonging to an infant and all or any part of the dividends in respect of such stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the infant, and payment in accordance with the order of the court shall operate as full release and discharge from all liability with respect to the money paid, and any transfer of any stock or bonds so sold shall be made in such manner as the court may direct.

Indemnity to banks, etc.

Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 44.

(2) The order shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done, or permitted to be done, pursuant thereto. R.S.O. 1927, c. 186, s. 12.



MARRIAGE SETTLEMENTS OF INFANTS

13.—(1) Every infant upon or in contemplation of his marriage, with the sanction of the Supreme Court, may make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such property, or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Power of infant with the approbation of the court to make valid marriage settlement.

Imp. Act, 18 and 19 Vict., c. 43, s. 1.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant.

Exception.

(3) The court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application. R.S.O. 1927, c. 186, s. 13.

Notice to persons interested.

Imp. Act, 18 and 19 Vict., c. 43, s. 3.

14. Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under the provisions of section 13, and the infant afterwards dies under age such appointment or disentailing assurance shall thereupon become absolutely void. R.S.O. 1927, c. 186, s. 14.

If infant dies under age, appointment or disentailing deed to be void.

Imp. Act, 18 and 19 Vict., c. 43, s. 2.

15. Nothing in sections 13 and 14 shall apply to a male infant under the age of twenty years or to a female infant under the age of seventeen years. R.S.O. 1927, c. 186, s. 15.

Case of males under 20 or females under 17.

Imp. Act, 18 and 19 Vict., c. 43, s. 4.

GUARDIANS

16.—(1) The surrogate court of the county or district in which the infant resides may appoint the father or mother of the infant, or may, with the consent of the father and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the infant, but if the infant is of the age of fourteen years no such appointment shall be made without his consent.

Appointment of guardians by surrogate court.

When infant's consent necessary.

(2) If the infant has no parent living or any guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in

Where no father or authorized guardian or infant does not consent.

subsection 1, upon the written application of the infant, or of any friend of the infant residing within the jurisdiction of the surrogate court to which the application is made, and after proof of twenty days' public notice of the application in some newspaper published within the county or district to the surrogate court to which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the infant, whether the infant is or is not entitled to any property.

Letters of guardianship to have effect throughout Ontario.

(3) Letters of guardianship granted by a surrogate court shall have force and effect in all parts of Ontario, and an official certificate of the grant may be obtained as in the case of letters of administration. R.S.O. 1927, c. 186, s. 16.

Security by the guardian.

Rev. Stat. cc. 263, 251.

17. Subject to the provisions of *The Guarantee Companies Securities Act* and of *The Companies Act* the court shall take from every guardian, appointed under section 16, a bond in the name of the infant, in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust, and that he, or his executors or administrators will, when the infant becomes of the full age of twenty-one years, or whenever the guardianship is determined, or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the infant, which shall have come into the hands of the guardian, and will thereupon without delay deliver and pay over to the infant, or to his executors or administrators, the estate or the sum which may be in the hands of the guardian belonging to the infant, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian, and the bond shall be recorded by the registrar of the court in the books of his office. R.S.O. 1927, c. 186, s. 17.

Condition of bond.

(NOTE—As to appointment of trust company as guardian, see *The Loan and Trust Corporations Act*. Rev. Stat. c. 257.)

Removal of guardians.

18.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act shall be removable by the Supreme Court, or by the surrogate court for the same causes for which trustees are removable.

Resignation of office by guardian.

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as may be deemed just. R.S.O. 1927, c. 186, s. 18.

19. A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by *The Surrogate Courts Act* in the case of grants of probate or administration. R.S.O. 1927, c. 186, s. 19.

Returns respecting guardians to surrogate court. Rev. Stat. c. 106.

#### AUTHORITY OF GUARDIANS

20. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited the guardian so appointed or constituted during the continuance of his guardianship,—

Guardian's authority.

(a) shall have authority to act for and on behalf of the infant; and

To act for ward.

(b) shall have the charge and management of his estate, real and personal, and the custody of his person and the care of his education. R.S.O. 1927, c. 186, s. 20.

To manage real and personal estate, etc.

#### PRACTICE IN AND APPEALS FROM SURROGATE COURTS

21. An appeal shall lie from an order or judgment of a surrogate court under this Act to the Court of Appeal. R.S.O. 1927, c. 186, s. 21.

Appeal from order or judgment of surrogate court.

22. The practice and procedure under *The Surrogate Courts Act* and rules shall apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act shall apply to proceedings under this Act. R.S.O. 1927, c. 186, s. 22.

Practice and procedure. Rev. Stat. c. 106.

#### GENERAL PROVISIONS

23. Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1927, c. 186, s. 23.

Jurisdiction of Supreme Court not affected.

24. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated. R.S.O. 1927, c. 186, s. 24.

Religious education of infant.

## CHAPTER 256

## The Insurance Act

## PART V

## LIFE INSURANCE

Interpreta-  
tion.128. In this Part, unless the context otherwise re-  
quires,—“Adopted  
child.”

1. “Adopted child” means a person who has been adopted by another person as his child and by reason thereof is entitled under the law of the place of adoption to inherit real property from that other person, if he dies intestate;

“Adopting  
parent.”

2. “Adopting parent” means a person who has adopted another person as his child and by reason thereof is entitled under the law of the place of adoption to inherit real property from that other person, if he dies intestate;

“Bene-  
ficiary.”

3. “Beneficiary” means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;

“Child” and  
“issue.”

4. “Child” and “issue” include an adopted child;

“Contract,”

“Contract of  
insurance,”“Contract of  
life insur-  
ance.”

5. “Contract,” “contract of insurance” and “contract of life insurance” mean a contract of life insurance and include any other contract which an insurer may issue under the authority of a license to transact life insurance;

“Court.”

6. “Court” means the Supreme Court or a judge thereof;

“Declara-  
tion.”

7. “Declaration” means an instrument in writing signed by the insured, attached to or endorsed on a policy, or an instrument in writing, signed by the insured in any way identifying the policy or describing the subject of the declaration as the insurance or insurance fund or a part thereof or as the policy or policies of the insured or using language of like import, by which the insured designates or appoints a beneficiary or beneficiaries, or alters or revokes the designation



or appointment of a beneficiary or beneficiaries, or apportionments or reapportionments, or appropriations or reappropriations, insurance money between or among beneficiaries;

8. "Foreign jurisdiction" means any jurisdiction other than the Province; "Foreign jurisdiction."
9. "Fraternal society" means a society, order or association incorporated for the purpose of making with its members only and not for profit contracts of life insurance under which benefits may be paid only to its members or their beneficiaries, in accordance with its constitution and laws and the provisions of this Act; "Fraternal society."
10. "Instrument in writing" includes a last will; "Instrument in writing."
11. "Insurance" means life insurance; "Insurance."
12. "Insurance money" includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance; "Insurance money."
13. "Insured" means the person who makes a contract with an insurer and, if the context so requires, includes the person whose life is insured; "Insured."
14. "Insurer" includes any corporation, or any society or association, incorporated or unincorporated, any fraternal society or any person or partnership, or any underwriter or group of underwriters, that undertakes or effects, or agrees or offers to undertake or effect, a contract of insurance; "Insurer."
15. "Judge" means a judge of the Court; "Judge."
16. "Parent", "father" and "mother" include an adopting parent of the same sex respectively; "Parent," "father," "mother."
17. "Person" includes firm, partnership, corporation and unincorporated society or association; "Person."
18. "Premium" means the single or periodical payment to be made for the insurance, and includes dues and assessments. 1935, c. 29, s. 2. "Premium."
19. "Will" includes a codicil. 1946 amendment. "Will" defined.

129.—(1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part shall apply to every contract of life insurance made in the Province Application.

after the 1st day of January, 1925, and any term in any such contract inconsistent with the provisions of this Part shall be null and void. R.S.O. 1927, c. 222, s. 120(1).

(2) This Part shall apply to every contract of life insurance made in the Province before the 1st day of January, 1925, where the maturity of the contract had not occurred before that date. 1935, c. 29, s. 3.

(3) This Part shall apply to every other contract of life insurance made after the 1st day of January, 1925, where the contract provides that this Part shall apply or that the contract shall be construed or governed by the law of the Province.

(4) Where this Part applies to any contract, the rights and status of beneficiaries and the powers of the insured with regard to the designation or appointment of beneficiaries and the apportionment of the insurance money shall be governed by the provisions of this Part, whether or not the insured or any of the beneficiaries is domiciled in the Province at the time at which the contract is made, or at any time subsequent thereto. R.S.O. 1927, c. 222, s. 120(3, 4).

When contract deemed to be made in the Province.

130. A contract is deemed to be made in the Province,—

- (a) if the place of residence of the insured is stated in the application or the policy to be in the Province; or
- (b) if neither the application nor the policy contains a statement as to the place of residence of the insured, but the actual place of residence of the insured is within the Province at the time of the making of the contract. R.S.O. 1927, c. 222, s. 121.

#### *The Contract of Insurance*

Policy to evidence a contract.

131. Every contract of insurance shall be evidenced by an instrument in writing called, in this Part, a policy. R.S.O. 1927, c. 222, s. 122.

Contents of policy.

132.—(1) Every policy issued after the 1st day of January, 1925, by an insurer shall state the name or sufficient designation of the insured, of the person whose life is insured, and of the beneficiary, the insurance money payable, the manner of payment, the premium, and the facts which determine the maturity of the contract. R.S.O. 1927, c. 222, s. 123(1); 1935, c. 29, s. 4(1).

(2) Every policy shall state the period of grace within which the premiums may be paid and the terms and conditions upon which the policy may, if it shall lapse, be reinstated, and shall indicate the amount (if any), of cash surrender, or loan value and the options (if any), of the insured as to paid up or extended insurance respectively provided by the policy.

(3) Every policy shall further indicate whether or not it will participate in any surplus or profits which may be declared.

(4) Every policy which includes disability insurance shall further state what notice of the disablement of the insured shall be given to the insurer.

(5) This section shall not apply to a contract of insurance made by a fraternal society. 1935, c. 29, s. 4(3).

133. Where the amount of insurance money, exclusive of dividends and bonus, does not exceed \$2,000, the policy, notwithstanding that it is expressed to be payable to a named or designated beneficiary, may provide that the insurance money may be paid to any relative by blood or connection by marriage of the insured or any other person appearing to the insurer to be equitably entitled to the same by reason of having incurred expense for the maintenance, medical attendance or burial of the insured or to have a claim against the estate of the insured in relation thereto. R.S.O. 1927, c. 222, s. 123(2); 1935, c. 29, s. 4(2).

Payment of  
policy not  
exceeding  
\$2,000.

134.—(1) Except in the case of a contract made with a fraternal society, no term or condition of a contract of insurance which is not set out in full in the policy or in a document or documents in writing attached to it, when issued, shall be valid or admissible in evidence to the prejudice of the insured or a beneficiary.

Invalidity of  
terms not set  
out in policy.

(2) Subsection 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy. R.S.O. 1927, c. 222, s. 124(1, 2).

Subsequent  
alterations.

(3) In the case of a contract of insurance made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution and laws and the amendments validly made thereto, and the application for the contract and medical examination of the applicant as signed by him shall constitute the contract between the society and its member. 1935, c. 29, s. 5.

Contract of  
fraternal  
society.



Disclosure  
and misrep-  
resentation  
by insured.

135.—(1) The applicant for a contract and the person whose life is to be insured shall each disclose to the insurer in the application for the contract, on the medical examination (if any), or in any statements or answers furnished in lieu of a medical examination every fact within his knowledge which is material to the contract, and a failure to disclose or misrepresentation of any such fact by either person shall render the contract voidable at the instance of the insurer.

Incontestability of  
statements.

(2) The statements made by the insured, or the person whose life is insured, in the application, on the medical examination (if any), or in any statements or answers furnished in lieu of a medical examination other than fraudulent statements or statements erroneous as to age, shall be deemed to be true and incontestable after the contract has been in force for two years during the lifetime of the person whose life is insured, but this provision shall not apply with respect to disability insurance or double indemnity insurance. 1935, c. 29, s. 6, *part*.

Disclosure  
and misrep-  
resentation  
by insurer.

136. A failure to disclose or misrepresentation of a fact material to the contract by the insurer shall render the contract voidable at the instance of the insured; provided that in the absence of fraud the contract shall not by reason of such failure to disclose or misrepresentation be voidable after the contract has been in force for two years during the lifetime of the person whose life is insured. 1935, c. 29, s. 6, *part*.

Materiality.

137. The question of materiality shall be one of fact. 1935, c. 29, s. 6, *part*.

Misstate-  
ment of age.

138.—(1) Where the age of the person whose life is insured is understated in the application, the insurance money shall be reduced to the amount which would have been payable in respect of the premium stated in the policy at the correct age, according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

Calculation  
of amount  
of benefits  
under policy.

(2) Where such tables of rates of premium of the insurer do not extend to or include the rates for the correct age of the person whose life is insured, the insurance money shall be reduced in the proportion that the premium at the age stated in the application bears to the premium at the correct age, both premiums for this purpose being the net premiums shown in or deduced from the British Offices' Life Table, 1893, O<sup>M</sup>(5), the rate of interest being three and one-half per centum per annum,



or, at the option of the insurer, both premiums for this purpose being calculated on the same principles as govern the calculation of premiums for ages mentioned in the table of rates of premium of the insurer in force at the time of the issue of the policy.

(3) Where the age of the person whose life is insured is over-stated in the application, and the policy does not provide that in that event the insurance money shall be increased, the insurer shall repay the amount by which the premium paid exceeds the premium which would have been payable in respect of the correct age, but if the policy so provides, the insurance money shall be increased to the amount which would have been payable in respect of the premium stated in the policy at the correct age according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

Where age overstated.

(4) Where, by the terms or for the purposes of the contract, an addition is made to the age stated in the application, and the age is understated in the application, then, for the purpose of the calculation, the correct age and the stated age shall respectively be deemed to be the correct age and the stated age increased by such addition.

What to be deemed correct age and stated age.

(5) Where the application or contract expressly limits the insurable age, and the correct age at the date of the application exceeds the age so limited, the contract shall, during the lifetime of the person whose life is insured, but not later than five years from the date of the policy, be voidable at the option of the insurer within thirty days after the error comes to its knowledge. R.S.O. 1927, c. 222, s. 128.

Where insurable age expressly limited.

139.—(1) Unless the contract or the application otherwise expressly provides, the contract shall not take effect or be binding on either party until the policy is delivered to the insured, his assign, or agent, or the beneficiary named therein and payment of the first premium is made to the insurer or its duly authorized agent, no change having taken place in the insurability of the life about to be insured subsequent to the completion of the application.

Conditions precedent to contract taking effect.

(2) Subject to the provisions of section 140, where a cheque, bill of exchange or promissory note payable to the insurer, or other written promise to pay the insurer, is given, whether originally or by way of renewal, for

Effect of default in payment of premium.

the whole or part of any premium, and the instrument, if payable on demand, is not paid upon presentment made on or after its date, or, if payable at a future time, is not paid upon presentment made at or after its maturity, the contract shall, unless otherwise provided in the policy, be void. R.S.O. 1927, c. 222, s. 129.

Period of  
grace for  
payment of  
premiums.

140.—(1) Where any premium, not being the initial premium, under any contract is unpaid, the insured, his assign or agent, or any beneficiary, may, within a period of grace of thirty days or, in the case of an industrial contract, four weeks from and excluding the day on which the premium is due, pay, deliver or tender to the insurer at its head office, or at its chief agency in the Province, or to its collector or authorized agent, the sum in default. R.S.O. 1927, c. 222, s. 130(1); 1935, c. 29, s. 7.

Manner of  
payment.

(2) The payment may be made by sending a post office order or postal note, or a cheque payable at par and certified by a bank doing business in Canada under the *Bank Act* (Canada), or a draft of such bank, or a money order of an express company doing business in the Province, in a registered letter duly addressed to the insurer, and the payment, delivery or tender shall be deemed to have been made at the time of the delivery and registration of the letter at any post office.

R.S.C.  
c. 12.

Effect of such  
payment.

(3) Payment, delivery or tender as aforesaid shall have the same effect as if made at the due date of the premium.

Concurrent  
period of  
grace under  
contract.

(4) The period of grace hereinbefore in this section mentioned shall run concurrently with the period of grace, if any, allowed by the contract for the payment of a premium or of an instalment of premium.

Contracts  
deemed to be  
in force  
during period  
of grace.

(5) Upon the maturity of the contract during the said period of grace and before the overdue premium is paid, the contract shall be deemed to be in as full force and effect as if the premium had been paid at its due date, but the amount of such premium with interest, not in excess of six per centum per annum, and the balance, if any, of the current year's premium, may be deducted from the insurance money.

Longer  
period of  
grace under  
contract not  
affected.

(6) Nothing in this section shall deprive the insured of the benefit of any period of grace allowed by the contract in excess of the period of grace allowed by this section. R.S.O. 1927, c. 222, s. 130(2-6).

141.—(1) Where a contract lapses and its cash value has not been paid and any options as to paid up or extended insurance have not been exercised, the insured shall be entitled to have the contract reinstated upon application within two years, or in the case of an industrial contract within one year, from the date of lapse upon the production of evidence of good health and other evidence of insurability of the person whose life was insured satisfactory to the insurer as at the date of the application for reinstatement and upon payment of all overdue premiums and other indebtedness to the insurer under the contract, with interest at such rate not exceeding six per centum per annum compounded annually, as the contract provides, and provided that no change has taken place in such good health and insurability subsequently to the date of such application and before the contract is reinstated.

Reinstatement of lapsed contract.

(2) Where an application is made to reinstate a contract and the contract is reinstated, section 135 shall *mutatis mutandis* apply, and the period of two years referred to in subsection 2 of that section shall run from the date of reinstatement.

Application of s. 135.

(3) If the contract which lapsed provided that in the event of the suicide of the person whose life was insured within a period of time fixed thereby it should be void or that the amount payable thereunder should be reduced, and after the contract is reinstated such person commits suicide within a period of time commencing with the date of reinstatement and of the same duration as the period of time fixed by the contract, the reinstated contract shall be likewise void, or the amount payable thereunder shall be likewise reduced.

Suicide.

(4) This section shall not apply to a contract of insurance made by a fraternal society. 1935, c. 29, s. 8.

Application to fraternal societies.

142. The insurer shall, upon request, furnish to the insured a true copy of the application for the insurance. R.S.O. 1927, c. 222, s. 131.

Duty of insurer to furnish copy of application.

143.—(1) Except in the case of contracts of fraternal societies entered into prior to the 1st day of January, 1937, where by a contract or declaration the insured appoints as beneficiaries or appoints or apports insurance money to his "heirs", "legal heirs", "lawful heirs" or "next of kin", the appointment or apportionment shall be deemed to be for the benefit of the estate of the insured.

Meaning of "heirs" and like words in contract or declaration.



Application  
of law of  
domicile.

(2) In the case of contracts of fraternal societies entered into prior to the 1st day of January, 1937, where by a contract or declaration the insured appoints as beneficiaries or appoints or apportions insurance money to his "heirs", "legal heirs", "lawful heirs", or "next of kin" the appointment or apportionment shall be deemed to be in favour of the persons provided by the law of the province, state or country in which the insured was domiciled at the time of his death respecting the distribution of the personal property of an intestate, and the insurance money so appointed or apportioned shall be paid to those persons in the shares provided by that law, and the insurance money shall not form part of the estate of the insured. 1936, c. 30, s. 2.

Certain  
persons not  
to be deemed  
agents of  
insured.

144. No officer, agent, employee or servant of the insurer or any person soliciting insurance, whether an agent of the insurer or not, shall to the prejudice of the insured be deemed to be for any purpose whatever the agent of the insured in respect of any question arising out of the contract of insurance. R.S.O. 1927, c. 222, s. 133.

### *Insurable Interest*

Insurable  
interest in  
own life.

145. Every person has an insurable interest in his own life. R.S.O. 1927, c. 222, s. 134.

Insurable  
interest in  
lives of  
others.

146. Without restricting the meaning which "insurable interest" now has in law, each of the following persons has an insurable interest,—

- (a) a parent in the life of his child under twenty-five years of age;
- (b) a husband in the life of his wife;
- (c) a wife in the life of her husband;
- (d) one person in the life of another, upon whom he is wholly or in part dependent for support or education, or from whom he is receiving support or education;
- (e) a corporation or other person in the life of its or his officer or employee;
- (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person. R.S.O. 1927, c. 222, s. 135.

Contract  
void without  
insurable  
interest.

147. The contract shall be void, if, at the time at which it would otherwise take effect and be binding, the insured has no insurable interest. R.S.O. 1927, c. 222, s. 136.



148. Where the insured has at the time at which the contract takes effect an insurable interest in the life insured, it is not necessary for the validity of the contract or any assignment that any beneficiary, or any person claiming under an assignment, or by will or by succession, have an insurable interest. R.S.O. 1927, c. 222, s. 137.

When insurable interest unnecessary.

*Policies on the Lives of Minors*

149. A minor shall, after attaining the age of fifteen years, have the capacity of a person of full age,—

Capacity of minors.

- (a) to effect a contract of insurance on his own life and to deal with such contract;
- (b) to deal with a contract of insurance on his own life effected by him before attaining the age of fifteen years;
- (c) to deal with his interest in a contract of insurance effected on his life by another, whether effected before or after the minor attained the age of fifteen years;
- (d) if married, to effect a contract of insurance on the life of his wife or her husband or his or her children, as the case may be, and to deal with such contract. 1935, c. 29, s. 10.

150.—(1) No insurer shall insure the life of a child under ten years of age in any sum, or pay on the death of a child under ten years of age any sum which alone or together with any sum payable on the death of the child by any other insurer exceeds the following sums respectively:

Restrictions on insurance on lives of children under ten years.

- \$100 if the child dies under the age of 1 year.
- 200 if the child dies under the age of 2 years.
- 300 if the child dies under the age of 3 years.
- 400 if the child dies under the age of 4 years.
- 500 if the child dies under the age of 5 years.
- 600 if the child dies under the age of 6 years.
- 700 if the child dies under the age of 7 years.
- 800 if the child dies under the age of 8 years.
- 900 if the child dies under the age of 9 years.
- 1000 if the child dies under the age of 10 years.

1931, c. 49, s. 10.

(2) Where the age of the child at the date of the contract is less than ten years, and the insurer knowingly or without sufficient inquiry enters into any contract prohibited by this section, the premiums paid thereunder

Where insurance excessive.

shall be recoverable from the insurer by the person paying the same, together with interest thereon at six per centum per annum.

Scale of  
benefits to  
appear on  
circular, etc.

(3) Every insurer which undertakes or effects insurance on the lives of children under ten years of age shall print the scale of benefits provided in subsection 1 in conspicuous type upon every circular or advertisement soliciting, and upon every policy of, such insurance.

Penalty.

(4) An insurer which knowingly contravenes the provisions of subsection 1 or 3 shall be guilty of an offence and liable to the penalties provided by law for the illegal conduct of insurance business in the Province.

Proviso.

(5) Nothing in subsections 1 and 3 shall apply to such contracts as were in force on the 14th day of April, 1892, or to a contract where the insured has a pecuniary interest in the life, or which limits the payment on the death of the child before attaining ten years of age to the premiums that have been paid, with interest at the rate provided for in the contract. R.S.O. 1927, c. 222, s. 139 (2-5).

### *Beneficiaries*

Classes of  
beneficiaries  
—for value.

151.—(1) Beneficiaries for value are beneficiaries who have given valuable consideration other than marriage and who are expressly stated to be, or described as, beneficiaries for value in the policy or in an endorsement thereon or in a subsequent declaration signed by the insured. R.S.O. 1927, c. 222, s. 140(1).

Preferred  
beneficiaries.

(2) Subject to section 159, preferred beneficiaries are the husband, wife, children, adopted children, grandchildren, children of adopted children, father, mother and adopting parents of the person whose life is insured. 1935, c. 29, s. 11.

Ordinary  
beneficiaries.

(3) Ordinary beneficiaries are beneficiaries who are not preferred beneficiaries, beneficiaries for value or assignees for value. R.S.O. 1927, c. 222, s. 140(3).

Right of  
beneficiary  
for value  
or assignee  
for value.

152. A beneficiary for value and an assignee for value of a policy shall have a vested interest in the policy; but except as regards beneficiaries for value who are expressly stated to be or described as beneficiaries for value in the policy, a beneficiary for value or assignee for value who gives notice in writing of his interest in the policy to the insurer at the head or principal office of the insurer in Canada prior to any other beneficiary for value or assignee for value shall have priority of interest as against

such last mentioned beneficiary or assignee. 1936, c. 30, s. 3.

**153.—**(1) Subject to the rights of beneficiaries for value and assignees for value and to the provisions of this Act relating to preferred beneficiaries, the insured may designate the beneficiary by the contract or by a declaration, and may from time to time by any declaration appoint, appropriate or apportion the insurance money, or alter or revoke any prior designation, appointment, appropriation or apportionment, or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, and may surrender the contract to the insurer, borrow from the insurer upon the security of the contract, receive the surplus or profits for his own benefit, and otherwise deal with the contract as may be agreed upon between him and the insurer. R.S.O. 1927, c. 222, s. 142(1).

Power of insured to deal with contract by declaration or otherwise.

(2) Subject to subsection 1, a beneficiary or a trustee appointed pursuant to section 177 may, at the maturity of the contract, enforce for his own benefit or as such trustee the payment of insurance money appointed, appropriated or apportioned to him by the contract or a declaration and in accordance with the terms thereof, but the insurer shall be entitled to set up any defence which it could have set up against the insured or his personal representatives; and payment made to the beneficiary or trustee shall discharge the insurer. 1936, c. 30, s. 4; 1946 amendment.

Payment of insurance money.

(2a) A declaration, whether contained in a will or other instrument in writing, shall, subject to subsection 1, have effect from the time of its execution, but a declaration shall not affect the interest or rights of a beneficiary for value or assignee for value unless the declaration has been filed with the insurer at its head or principal office in Canada prior to the time when the beneficiary for value or assignee for value acquired such interest or rights and if not so filed the interest or rights of the beneficiary for value or assignee for value shall be as if the declaration had not been made. 1946 amendment.

Effect of declaration.

(2b) In the case of a declaration contained in a will it shall be sufficient for the purposes of subsection 2a to file a copy thereof or of the material part thereof verified by statutory declaration. 1946 amendment.

Declaration in will.



Other  
declarations.

(3) A declaration contained in an instrument purporting to be a will which has not been revoked otherwise than by operation of law shall be effective as a declaration, notwithstanding that the instrument is invalid as a testamentary instrument. 1935, c. 29, s. 12, *part*.

Equality  
between  
beneficiaries.

154. Where two or more beneficiaries are designated otherwise than alternatively, but no apportionment is made, they shall share equally. R.S.O. 1927, c. 222, s. 143.

Disposal of  
shares of  
deceased  
ordinary  
beneficiaries.

155. Where there are several beneficiaries of whom one or more are ordinary beneficiaries and one or more of the ordinary beneficiaries die before the maturity of the contract, and no apportionment or other disposition of his or their shares is provided for in the contract or by a declaration, the share of any such deceased ordinary beneficiary, shall be payable to the surviving designated beneficiary or beneficiaries, whether preferred or ordinary, and, if more than one, in equal shares but, if there is no surviving beneficiary, shall be payable to the insured or his estate. 1935, c. 29, s. 13.

Trust in  
favour of  
preferred  
beneficiaries.

156.—(1) Where the insured, in pursuance of the provisions of section 153, designates as beneficiary or beneficiaries, a member or members of the class of preferred beneficiaries, a trust is created in favour of the designated beneficiary or beneficiaries, and the insurance money, or such part thereof as is or has been apportioned to a preferred beneficiary, shall not, except as otherwise provided in this Act, be subject to the control of the insured, or of his creditors, or form part of the estate of the insured. R.S.O. 1927, c. 222, s. 145(1); 1935, c. 29, s. 14(1).

Right to  
income only.

(2) The contract may provide or the insured may at any time direct by declaration that a preferred beneficiary shall be entitled only to the income from insurance money for life or for a period of time or subject to any limitation or contingency stated in the instrument.

Proviso.

(3) The provisions of this section are subject to any vested rights of beneficiaries for value and assignees for value, to the provisions hereinafter contained relating to preferred beneficiaries, and to any contingency or limitation stated in the instrument by which the insured designates a preferred beneficiary, provided that no provision in any instrument reserving to the insured the right to revoke or abridge the interest of a preferred beneficiary shall be effective so as to enable the insured to revoke



or abridge that interest in favour of a person not in the class of preferred beneficiaries. 1935, c. 29, s. 14(2).

157. Notwithstanding the designation of a preferred beneficiary or beneficiaries, the insured may subsequently exercise the powers conferred by section 153 so as to restrict, limit, extend or transfer the benefits of the contract to any one or more of the class of preferred beneficiaries to the exclusion of any or all others of the class, or wholly or partly to one or more for life or any other term or subject to any limitation or contingency, with remainder to any other or others of the class. R.S.O. 1927, c. 222, s. 146.

Disposal of insurance moneys within class of preferred beneficiaries.

158.—(1) Subject to the provisions of section 160, where by the policy or by a subsequent declaration the insurance money or any part of it is made payable to or for the benefit of the wife of the person whose life is insured, his future wife, his wife and children or his future wife and children generally, or his children generally, the word "wife" means the wife living at the maturity of the contract, and the word "children" includes all the children of the person whose life is insured living at the maturity of the contract as well as the issue living at the maturity of the contract of any child of his who predeceases him, such issue taking by representation. R.S.O. 1927, c. 222, s. 147(1); 1935, c. 29, s. 15.

Meaning of "wife" and "children" in policy or declaration.

(2) The provisions of subsection 1 shall *mutatis mutandis* apply to insurance effected by a woman on her life where the insurance money or any part of it is made payable to or for the benefit of her husband or future husband, her husband and children or future husband and children generally, or her children generally.

Meaning of "husband" and "children" in policy or declaration.

(3) Subsections 1 and 2 shall not apply where the beneficiary or beneficiaries is or are designated by name, or otherwise definitely indicated. R.S.O. 1927, c. 222, s. 147(2, 3).

Proviso.

159. For the purposes of this Part an adopted child and its adopting parent shall from the date of the adoption be deemed to bear towards one another the relationship of preferred beneficiaries, and an adopted child and its natural parents shall from the date of the adoption be deemed to bear towards one another the relationship of ordinary beneficiaries, and in either case this provision shall apply in respect of insurance effected both before and after the date of adoption. 1935, c. 29, s. 16.

Effect of adoption on relationship of beneficiaries.

Disposal of share of deceased preferred beneficiary right to designate alternative beneficiary.

160.—(1) Subject to subsection 2 the contract may provide or the insured may at any time direct by declaration that if a preferred beneficiary shall die before the maturity of the contract, the insurance money or any part thereof appointed to the preferred beneficiary shall be payable to the insured, to his estate, or to any other person, whether that person is within the class of preferred beneficiaries or not.

Where alternative preferred beneficiary named.

(2) Where the contract provides or the insured by a declaration directs that insurance money shall go to a preferred beneficiary and in the event of the death of the preferred beneficiary to some other person in the class of preferred beneficiaries, and the first named beneficiary dies, the insured may before the maturity of the contract exercise only the powers referred to in section 157.

Where no alternative preferred beneficiary named.

(3) In case of the death of a preferred beneficiary before the maturity of the contract and in the absence of any provision in the contract or a declaration by which some other person in the class of preferred beneficiaries is to become entitled to the insurance money or any part thereof appointed to the deceased beneficiary in the event of his death or upon the happening of any other event, the insured may deal under section 153 with the insurance money or part thereof in the same manner and to the same extent as if the deceased beneficiary had not been a preferred beneficiary. 1935, c. 29, s. 17(1).

Proviso.

(4) Subject to the provisions of this section the share of a preferred beneficiary who dies before the maturity of the contract shall be payable as follows:—

- (a) If the deceased beneficiary was a child of the person whose life is insured, and has left issue surviving at the maturity of the contract, his share, and any share to which he would have been entitled if he had survived, shall be payable to such issue in equal shares, such issue taking by representation.
- (b) If there is no person entitled under clause *a*, the share of such deceased beneficiary shall be payable to the surviving designated preferred beneficiary or beneficiaries in equal shares.
- (c) If there is no person entitled under clauses *a* and *b*, the share of such deceased beneficiary shall be payable in equal shares to the wife or husband and the child or children of the person whose life

is insured living at the maturity of the contract, and the issue then living of any deceased child of the person whose life is insured, such issue taking in equal shares the share to which his or their parent would have been entitled if living.

- (d) If there is no person entitled under clauses *a*, *b*, and *c*, the share of such deceased beneficiary shall be payable to the insured, or his estate. R.S.O. 1927, c. 222, s. 148(2); 1935, c. 29, s. 17(2).

161.—(1) Where the wife or husband of the person whose life is insured is designated as beneficiary, and is subsequently divorced, all interest of the beneficiary under the policy shall pass to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for value.

Effect of divorce of certain beneficiaries.

(2) Where a divorce has been granted on the application of the beneficiary, the beneficiary shall be estopped from denying the validity of the divorce for the purpose of this section. R.S.O. 1927, c. 222, s. 149(1, 2).

When deemed lawfully divorced.

(3) Until the insurer receives at its head or principal office in Canada notice in writing of the Act of Parliament, judgment, decree or order granting the divorce, it may deal with the insurance money in the same manner and with the same effect as if no divorce had been granted, and before paying the insurance money, the insurer shall be entitled to receive the original judgment, order or decree or a duly verified copy thereof, or a duly verified copy of the Act of Parliament, or a copy thereof printed by the King's printer, as the case may be. R.S.O. 1927, c. 222, s. 149(3); 1936, c. 30, s. 5.

Notice of divorce.

(4) Nothing in subsection 3 shall affect the right of any person entitled to payment by virtue of such divorce to recover from any person to whom payment is made by the insurer. R.S.O. 1927, c. 222, s. 149(4).

Recovery.

162. Where the wife or husband of the person whose life is insured is designated as beneficiary, and it appears, in the case of the wife, that she is living apart from her husband in circumstances disentitling her to alimony, or in the case of the husband, that he is living apart from his wife in circumstances disentitling him to an order for restitution of conjugal rights, and that there is no other member of the class of preferred beneficiaries whom the insured may designate as beneficiary in place of the designated beneficiary, the court may, on the application of the

Circumstances disentitling wife or husband as beneficiary.



insured, and on such terms as may seem fit, declare the designated beneficiary disentitled to claim the benefit of the provisions of this Part relating to preferred beneficiaries, and the insured may then deal with the policy as provided by section 153. R.S.O. 1927, c. 222, s. 150.

Surrender of or borrowing on contract where preferred beneficiary.

163.—(1) Where a preferred beneficiary is designated, the insured may surrender the contract to the insurer and accept in lieu thereof any paid up or extended insurance provided by the contract in favour of the preferred beneficiary.

(2) Where a preferred beneficiary is designated, the insured may, from time to time, borrow from the insurer on the security of the contract, such sums as may be necessary and are applied to keep it in force, and the sums so borrowed, with such interest as may be agreed on, shall be a first charge on the contract and the insurance money. R.S.O. 1927, c. 222, s. 151.

Disposal of surplus or profits where preferred beneficiary.

164.—(1) Notwithstanding the designation of a preferred beneficiary, any person who effects a participating contract may, during his lifetime receive for his own benefit the surplus or profits declared on the contract or may direct the insurer to apply them in payment or reduction of premiums, or in the purchase of paid up additions to the sum insured, or to hold them to his credit for accumulation, or to deal otherwise with such surplus or profits as the contract may provide, and upon the maturity of the contract all surplus or profits so held to the credit of the insured, or being due and unpaid, shall, subject to the contract and to any direction by the insured to the contrary, be added to the insurance money and the share of any beneficiary shall be increased accordingly.

Insurer may apply surplus to keep contract in force.

(2) The insurer may apply for the purpose of keeping the contract in force any surplus or profits declared on the contract and held by the insurer to the credit of the contract or of the insured, or held for accumulation, and not otherwise applied or dealt with under subsection 1.

Obligation of insurer.

(3) The insurer shall not be obliged to pay or apply any surplus or profits in a manner contrary to the terms of the contract or of any subsequent agreement. 1935, c. 29, s. 18.

Dealing with contract with consent of beneficiary.

165.—(1) Where all the designated preferred beneficiaries are of full age, they and the insured may surrender the contract or may assign or dispose of the same



either absolutely or by way of security, to the insurer, the insured or any other person, but notwithstanding anything herein contained the insured may exercise the borrowing powers conferred by section 163 without the concurrence of any beneficiary.

(2) Where the beneficiaries, whether designated by name or not, include the wife or children or grandchildren, it shall be sufficient, so far as their interests are concerned, if all then living are of full age and join in the surrender, assignment or disposal. R.S.O. 1927, c. 222, s. 153.

(3) Where insurance money is made payable to a minor or other person under disability or to a trustee on behalf of a minor or person under disability, and where the insurance money or a part thereof is required for the maintenance or education of the minor or person under disability, the Court may, upon the application of the insured, upon at least ten days' notice to the insurer, make an order, on such terms as it may deem just, permitting the insured to surrender the contract to the insurer, or to borrow from the insurer on the security thereof and payment by the insurer in accordance with such order shall discharge it from liability in respect of such payment.

(4) Where a contract has been assigned as security for any loan or debt the rights of any beneficiary, whether ordinary or preferred, under such contract shall be affected only to the extent necessary to give effect to the rights of the assignee, and when the loan or debt is discharged the assignee shall furnish a certificate in writing to that effect and that the assignee has no further right, title or interest in the contract. 1935, c. 29, s. 19.

166. Where by a contract or any instrument in writing a person is to become entitled to insurance money only in the event of the death of another person named as a beneficiary it shall not be necessary for such first mentioned person to join in any surrender, assignment or disposal of the contract. R.S.O. 1927, c. 222, s. 154; 1935, c. 29, s. 20.

167.—(1) Where the insurance money is payable in instalments and the contract, or an instrument in writing signed by the insured and delivered to the insurer, expressly provides that the beneficiary shall not have the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not commute the instalments or pay them to any person other than the

beneficiary, and the instalments shall not, in the hands of the insurer, be subject to legal process except in an action to recover for necessities supplied to the beneficiary or his or her infant children. R.S.O. 1927, c. 222, s. 155(1); 1935, c. 29, s. 21.

Exceptions.

(2) Notwithstanding anything contained in subsection 1,—

- (a) the insured may, by an instrument in writing signed by him and delivered to the insurer, declare that the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (b) the Court may, upon the application of the insurer or the beneficiary, upon at least ten days' notice, declare that in view of special circumstances the beneficiary shall have the right to commute, or alienate or assign, as the case may be;
- (c) after the death of the beneficiary his personal representatives may commute any instalments payable to them.

"Instalments,"  
meaning of.

(3) In this section the word "instalments" includes insurance money or any part thereof held by the insurer under the provisions of section 168. R.S.O. 1927, c. 222, s. 155(2, 3).

insurance  
money held  
by insurer  
subject to  
terms of  
contract or  
other  
directions.

168. Subject to the provisions of this Part relating to preferred beneficiaries, where it is so expressly provided in the contract or by an agreement in writing with the insurer or by a declaration, the insurer may hold the insurance money or any part thereof after maturity of the contract subject to the order of the beneficiary, or upon such trusts or other agreements for the benefit of the beneficiary as may be provided in the contract, agreement or declaration, allowing and paying for the term during which the insurer retains such insurance money or any part thereof, interest thereon at a rate not less than that specified in the contract, agreement or declaration, or, if no rate be agreed upon, at the rate declared from time to time by the insurer in respect to insurance money so held by it; provided that the insurer shall not be bound to carry out the terms of any declaration to which it has not agreed in writing. 1935, c. 29, s. 22, *part*.

169.—(1) Until the insurer receives at its head or principal office in Canada notice in writing of the making of an order declaring a beneficiary disentitled to insurance money, or of any instrument in writing affecting the insurance money or any part thereof or of the appointment or the revocation of the appointment of a trustee, it may make any payment which would have been lawful and valid except for such order, instrument in writing, appointment or revocation of appointment, and before making any payment in pursuance or under the authority of such order, instrument in writing, appointment or revocation of appointment, it shall be entitled to receive the original or a true copy thereof. R.S.O. 1927, c. 222, s. 157(1); 1936, c. 30, s. 7.

Payments by insurer without notice of change in title to insurance money.

(2) Nothing in this section shall affect the right of any person entitled to payment by virtue of such order, instrument in writing, appointment or revocation of appointment, to recover from any person to whom payment has been made by the insurer. R.S.O. 1927, c. 222, s. 157(2).

Proviso.

170. The insurer shall not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument in writing affecting the insurance money which the insurer has received. 1936, c. 30, s. 8.

Right of insurer to give or withhold information.

### *Proof of Claim and Payment*

171.—(1) The insurer shall be entitled to reasonably sufficient proof in writing verified by affidavit or statutory declaration of the maturity of the contract, of the age of the person whose life is insured and of the right of the claimant to receive payment of the insurance money. R.S.O. 1927, c. 222, s. 158(1).

Insurer entitled to certain proof of claim—age of insured and right of claimants.

(2) Where the insurance money or part thereof is payable to or for the benefit of a beneficiary, the insurer shall be entitled to reasonably sufficient proof of the name and age of the beneficiary. 1935, c. 29, s. 23.

Name and age of beneficiary.

172.—(1) Insurance money which is expressed to be payable at the maturity of the contract shall be payable thirty days after reasonably sufficient proof has been furnished to the insurer of the maturity of the contract, of the age of the person whose life is insured, and of the right of the claimant to receive payment. R.S.O. 1927, c. 222, s. 159(1).

Time for payment of insurance money.



Place of  
payment.

(2) Insurance money shall be payable in the province in which the insured is domiciled at the time of death, or in which he is domiciled when it becomes payable otherwise than by reason of death, or, if he was not or is not then domiciled in Canada and the contract does not otherwise provide, shall be payable at the head or principal office of the insurer in Canada. 1936, c. 30, s. 9.

Manner of  
payment.

(3) Every amount to be paid to or by an insurer under a contract shall be payable in lawful money of Canada, unless the contract expressly provides for payment in another currency.

Meaning of  
"dollars."

(4) In every contract, whether the contract by its terms provides for payment in Canada or elsewhere, amounts expressed in dollars shall mean lawful dollars of Canadian currency, unless some other currency is specifically provided for in the contract. 1935, c. 29, s. 24, *part*.

Payments  
outside of  
Canada.

173. Where insurance money is payable in respect of a policy on the life of a person who is at the date of his death domiciled elsewhere than in Canada to another person domiciled elsewhere than in Canada, and there is no person in Canada entitled to receive it, the insurer may pay it to the person to whom it is so payable, or to any other person entitled to receive it on his behalf by the law of the domicile of the payee. 1935, c. 29, s. 25.

Application  
to Court for  
declaration  
as to  
sufficiency  
of proofs.

174.—(1) Where the insurer admits the validity of the contract but does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance money, and where there is no other question in issue, except a question under subsection 2, the insurer or the claimant may, before or after action brought, upon at least thirty days' notice apply to the Court for a declaration as to the sufficiency of the proof furnished, and the Court may direct what further proof shall be furnished, or in special circumstances, may dispense with further proof.

Declaration  
as to  
presumption  
of death.

(2) Where the claimant alleges that the person whose life is insured is presumed to be dead by reason of his not having been heard of for seven years, and where there is no other question in issue except a question under subsection 1, the insurer or the claimant may, before or after action brought, upon at least thirty days' notice, apply to the Court for a declaration as to the presumption of death.

(3) If the Court finds that the proof of the maturity of the contract or of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or that a presumption of death has been established, or makes an order directing what further proof shall be furnished or in special circumstances dispensing with further proof, the finding or order of the Court shall, subject to appeal, be conclusive and binding upon the applicant and all parties notified of the application and the Court may make such order as to the payment of the insurance money and as to the costs as to it may seem just. 1935, c. 29, s. 26.

Effect of  
order of  
Court.

(4) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

Effect of  
payment.

(5) If the Court does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or that the presumption of death is established, the Court may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to it seems just as to further proof to be furnished by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

Powers of  
judge.

(6) Unless otherwise ordered by the Court, the application shall operate as a stay of any pending action with respect to the insurance money. R.S.O. 1927, c. 222, s. 160(4-6).

Stay of  
proceedings.

175. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first. R.S.O. 1927, c. 222, s. 161

Presumption  
where in-  
sured and  
beneficiary  
perish in  
same disaster.

175a. An agreement, express or implied, contained in a contract of life insurance for the payment of insurance money in the event that the insured commits suicide shall be lawful and enforceable. 1940, c. 11, s. 5.

Contract not  
invalidated  
by suicide.

### Miscellaneous

176.—(1) Subject to subsections 2 to 4, any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment, or within six years next after the

Limitation  
of actions.

maturity of the contract, whichever period shall first expire, but not afterwards.

Limitation  
when death  
presumed.

(2) Where an order has been made declaring that death is presumed from the fact that the person whose life is insured has not been heard of for seven years, an action or proceeding shall be commenced within one year and six months from the date of the order, but not afterwards. R.S.O. 1927, c. 222, s. 162(1, 2).

Limitation  
where death  
unknown to  
claimant.

(3) Where the death of the person whose life is insured is unknown to the person entitled to claim under the contract, an action or proceeding may be commenced within the prescribed period or within one year and six months after the death becomes known to him whichever period shall first expire but not afterwards. R.S.O. 1927, c. 222, s. 162(3); 1935, c. 29, s. 27(1).

Limitation  
when action  
prematurely  
brought.

(4) Where an action or proceeding is prematurely brought, the plaintiff may commence a new action or proceeding at any time within six months after the final determination of the first action or proceeding. R.S.O. 1927, c. 222, s. 162(4); 1935, c. 29, s. 27(2).

appoint-  
ment of  
trustees for  
beneficiary  
by insured.

177.—(1) The powers conferred upon the insured by this Part with regard to the designation or appointment of a beneficiary or beneficiaries, and the alteration or revocation of such designation or appointment, and the apportionment or reapportionment of insurance money between or among beneficiaries, shall include power from time to time to appoint a trustee or trustees for any beneficiary or beneficiaries, to revoke such appointment or alter its terms, to appoint a new trustee or trustees, or to make provision for the appointment of a new trustee or trustees.

Effect of  
appointment  
on bene-  
ficiary.

(2) The appointment of a trustee or trustees for any beneficiary shall not have the effect of taking away from the Court or the insured any power of depriving the beneficiary of the benefit of the insurance money which the Court or the insured would have under this Act if such beneficiary had been designated as beneficiary without the appointment of a trustee.

Payment to  
trustee.

(3) Payment made to the trustee or trustees appointed as hereinbefore provided shall discharge the insurer. R.S.O. 1927, c. 222, s. 163.

Payment of  
share of  
persons  
under  
disability.

178.—(1) Where no trustee is appointed to receive the share to which a minor or other person under disability is entitled, or where a trustee is named but refuses



or neglects to act or dies or otherwise becomes incapable of acting, the share of the minor or other person under disability may be paid to a guardian or tutor or trustee of the minor or to a curator, committee or trustee of such other person under disability duly appointed under the law of this Province. 1936, c. 30, s. 10.

(2) Where insurance money not exceeding \$2,000 is payable to the husband and children or to the wife and children, or to the children of the person whose life is insured, and one or more of the children are minors, the Court may, if the wife is the mother of such minors, appoint her their guardian, or if the husband is the father of such minors, appoint him their guardian, with or without security, and the insurance money may be paid to him or her as guardian.

(3) Where it appears that a guardian, tutor, curator, committee or trustee of minors or other beneficiaries under disability has been appointed in a foreign jurisdiction, and that the minors or other beneficiaries are resident within that jurisdiction, the Court may authorize payment of the insurance money to the guardian, tutor, curator, committee or trustee with or without security in the Province. R.S.O. 1927, c. 222, s. 164(2, 3).

179.—(1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that,—

- (a) there are adverse claimants; or
- (b) the place of abode of a person entitled is unknown; or,
- (c) there is no person capable of giving or authorized to give, a valid discharge;

the insurer may, at any time after the expiration of one month from the maturity of the contract, apply to the Court for an order for payment of the money into Court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly, and such application shall in the first instance be made *ex parte*. 1936, c. 30, s. 11.

(2) Where the insurer admits liability for the insurance money or any part thereof payable to a minor and there is no person capable of giving a valid discharge therefor, the insurer may at any time after the expiration of one month from the maturity of the contract, pay

such money, less the costs mentioned in subsection 3, into Court to the credit of the minor.

**Costs.**

(3) The insurer may retain out of the insurance money for costs \$10 if the amount does not exceed \$1,000, and \$15 in other cases, and payment of the remainder into Court shall discharge the insurer.

**Procedure for payment in under subsection 2.**

(4) No order shall be necessary for payment into Court under subsection 2, but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Official Guardian of infants and deliver to him a copy of the affidavit. R.S.O. 1927, c. 222, s. 165(2-4).

**Power of Court where insurer fails to pay after proof.**

180. Where the insurer does not within two months after due proof of the claim, pay the insurance money to some person competent to receive the same under this Part or into Court, the Court may, upon application of any person, order that the insurance money, or any part thereof, be paid into Court or may make such other order as to the distribution of such money as to the Court may seem just, and payment made in accordance with such order shall be a sufficient discharge to the insurer. R.S.O. 1927, c. 222, s. 166.

**Costs of proceedings under ss. 179, 180.**

181. The Court may order the costs incurred upon or in connection with any application or order made under section 179 or 180 to be paid out of the insurance money or by the insurer or the applicant or otherwise as may seem just. R.S.O. 1927, c. 222, s. 167.

**Construction of Part.**

182. This Part shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it. R.S.O. 1927, c. 222, s. 168.

## CHAPTER 110

## The Mental Incompetency Act

## 1. In this Act,—

Interpretation.

- (a) "Contingent right," as applied to land, shall include a contingent and an executory interest; a possibility coupled with an interest whether the object of the gift or limitation or such interest or possibility is or is not ascertained, and a right of entry whether immediate or future and whether vested or contingent;

"Contingent right."

Imp. Act, 53-54 Vict. c. 5, s. 341.

- (b) "Convey" and "conveyance," applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance;

"Convey."  
"Conveyance."

- (c) "Court" shall mean the Supreme Court;

"Court."

- (d) "Land" shall include messuages, tenements, and hereditaments, corporeal and incorporeal of every tenure or description whatever may be the estate or interest therein, and whether entire or undivided; R.S.O. 1927, c. 98, s. 1, cls. (a-d).

"Land."

- (e) "Mentally incompetent person" shall mean a person,—

"Mentally incompetent person."

- (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or

- (ii) who is suffering from such a disorder of the mind,

that he requires care, supervision and control for his protection and the protection of his property;

- (f) "Mental incompetency" shall mean the condition of mind of a mentally incompetent person; 1937, c. 39, s. 4.

"Mental incompetency."



- "Mortgage."  
Imp. Act,  
53-54 Vict.  
c. 5, s. 341.
- (g) "Mortgage" shall include every interest or property in real or personal estate which is a security for money or money's worth;
- "Possessed."
- (h) "Possessed" shall be applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy in any land;
- "Seised."
- (i) "Seised" shall be applicable to any vested interest for life or of a greater description, and shall extend to estates at law and in equity in possession or in futurity in any land;
- Imp. Act,  
54-55 Vict.  
c. 65, s. 28.
- "Stock."
- (j) "Stock" shall include shares and any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Acts relating to merchant shipping;
- Imp. Act,  
53-54 Vict.  
c. 5, s. 341.
- "Trust."  
"Trustee."
- (k) "Trust" and "trustee" shall include implied and constructive trusts and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage. R.S.O. 1927, c. 98, s. 1, cls. (g-k).

## JURISDICTION OF COURT

Powers of  
the Court.  
Rev. Stat.,  
c. 392.

2.—(1) Subject to the provisions of *The Mental Hospitals Act*, the Court shall have all the powers, jurisdiction and authority of His Majesty over and in relation to the persons and estates of mentally incompetent persons, including the care and the commitment of the custody of mentally incompetent persons and of their persons and estates.

Orders of  
Court.

(2) The Court may make orders for the custody of mentally incompetent persons and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the completion of the committee's security. R.S.O. 1927, c. 98, s. 2; 1937, c. 39, s. 3.

Powers of  
judge in  
chambers.

3. The powers by this Act conferred upon the Court may be exercised by a judge of the Supreme Court in Chambers. R.S.O. 1927, c. 98, s. 3.

4. The Court may delegate to a master, official referee or other officer all or any of the powers of the Court under this Act, except the making of a declaration of mental incompetency. R.S.O. 1927, c. 98, s. 4; 1937, c. 39, s. 3.

Power of master and official referee.

#### DECLARATION OF MENTAL INCOMPETENCY

5.—(1) The Court upon application supported by evidence, may by order declare a person a mentally incompetent person if the Court is satisfied that the evidence establishes beyond reasonable doubt that he is a mentally incompetent person.

Declaration of mental incompetency.

(2) The application may be made by the Attorney-General for Ontario, by any one or more of the next of kin of the alleged mentally incompetent person, by his or her wife or husband, by a creditor, or by any other person.

By whom application to be made.

(3) The alleged mentally incompetent person and any person aggrieved or affected by the order shall have the right to appeal therefrom.

Appeal.

(4) The practice and procedure on the appeal shall be the same as on an appeal from an order made by a judge of the Supreme Court. R.S.O. 1927, c. 98, s. 5; 1937, c. 39, s. 3.

Procedure.

6.—(1) Where in the opinion of the Court the evidence does not establish beyond reasonable doubt the alleged mental incompetency, or where for any other reason the Court deems it expedient so to do, instead of making an order under subsection 1 of section 5, the Court may direct an issue to try the alleged mental incompetency.

Issue to try the alleged mental incompetency.

(2) Subject to the provisions of section 7 the issue shall be tried with or without a jury as the Court directing it or the judge presiding at the trial may order.

Method of trial.

(3) The trial shall take place at such time and place as the Court may direct.

Time and place.

(4) On the trial of the issue the alleged mentally incompetent person, if within the jurisdiction of the court, shall be produced, and shall be examined at such time and in such manner, either in open Court or privately, and, where the trial is with a jury, before the jury retire to consider their verdict, as the presiding judge may direct, unless the Court by the order directing the issue or the judge presiding at the trial dispenses with the production of the mentally incompetent person or with his examination. R.S.O. 1927, c. 98, s. 6(1-4); 1937, c. 39, s. 3.

Production of mentally incompetent person.

## Scope of inquiry.

(5) On the trial of the issue the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry is at the time of the inquiry a mentally incompetent person and incapable of managing himself or his affairs, and the presiding judge shall make an order in accordance with the result of the inquiry. R.S.O. 1927, c. 98, s. 6(5); 1937, c. 39, s. 5.

## Procedure.

(6) The practice and procedure as to the preparation, entry for trial and trial of the issue, and all the proceedings incidental thereto, shall be the same as in the case of any other issue directed by the Court or a judge.

## Appeal.

(7) The alleged mentally incompetent person and any person aggrieved or affected thereby shall have the like right to move against a verdict or to appeal from an order made upon or after the trial as may be exercised by a party to an action in the Supreme Court including the right of appeal; and the Court hearing any such motion or appeal shall have the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

## Finality.

(8) Subject to the provisions of section 9 the order or judgment of the Court or, where the issue is tried by a jury, the verdict of the jury shall be final unless set aside upon appeal or motion under subsection 7. R.S.O. 1927, c. 98, s. 6(6-8); 1937, c. 39, s. 3.

## Right of alleged mentally incompetent person to have issue tried by jury.

7. An alleged mentally incompetent person shall be entitled to demand, by notice in writing to be given to the person applying for the declaration of his mental incompetency, and also to be filed in the Central Office at Osgoode Hall, Toronto, at least ten days before the first day of the sittings at which the issue is directed to be tried, that any issue directed to determine the question of his mental incompetency shall be tried with a jury, and, unless he withdraws such demand before the trial, or the Court is satisfied by personal examination of the mentally incompetent person that he is not mentally competent to form and express a wish for a trial by jury and so declares by order, the issue shall be tried by a jury. R.S.O. 1927, c. 98, s. 7; 1937, c. 39, s. 3.

## Examination of alleged mentally incompetent person.

8.—(1) For the purposes of the examination mentioned in section 7, or where it is deemed proper for any other purpose, the Court may require the alleged mentally incompetent person to attend at such convenient time and place as the Court may appoint.



(2) The Court may by order require an alleged mentally incompetent person to attend and submit to examination by one or more medical practitioners at such time and place as the order directs. R.S.O. 1927, c. 98, s. 8; 1937, c. 39, s. 3.

Order for medical examination.

#### SUPERSEDING DECLARATION OF MENTAL INCOMPETENCY

9.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared a mentally incompetent person, or sooner by leave of the Court, the Court, if satisfied that such person has become mentally competent and capable of managing his own affairs, may make an order so declaring. R.S.O. 1927, c. 98, s. 9(1); 1937, c. 39, ss. 3, 6(1).

Application to supersede declaration of mental incompetency.

(2) Any such order shall be subject to appeal as provided by subsections 3 and 4 of section 5. R.S.O. 1927, c. 98, s. 9(2).

Appeal.

(3) Instead of making an order under subsection 1 the Court may direct an issue to try the question of the recovery of the person so formerly declared or adjudged a mentally incompetent person. R.S.O. 1927, c. 98, s. 9(3); 1937, c. 39, ss. 3, 6(2).

Directing issue as to recovery.

(4) Any issue so directed shall be subject to the provisions of section 6 and of section 7. R.S.O. 1927, c. 98, s. 9(4).

Application of ss. 6 and 7.

(5) Where a person formerly declared a mentally incompetent person has been found to be mentally competent and capable of managing his own affairs and the time for appealing from or moving against the order or verdict has expired, or if an appeal be taken or a motion made, when the same has been finally dismissed, an order may be issued superseding, vacating, and setting aside the order declaring the mental incompetency of such person for all purposes except as to acts or things done in respect of the person or estate of the mentally incompetent person while such order was in force. R.S.O. 1927, c. 98, s. 9(5); 1937, c. 39, ss. 3, 6(3).

Order superseding declaration of mental incompetency.

#### COMMITTEES OF ESTATES OF MENTALLY INCOMPETENT PERSONS

10. Where a committee of the estate of a mentally incompetent person has been appointed,—

Inventory of  
present  
property.

(a) the committee shall, within six months after being appointed, file in the office of the master to whom the matter is referred, or of such officer as may be appointed for that purpose, a true inventory of the whole real and personal estate of the mentally incompetent person, stating the income and profits thereof, and setting forth the debts, credits, and effects of the mentally incompetent person, so far as the same have come to the knowledge of the committee;

Also, of after  
discovered  
property.

(b) if any property belonging to the estate is discovered after the filing of the inventory the committee shall file a true account of the same, from time to time, as it is discovered;

Verification.

(c) every inventory and account shall be verified by the oath of the committee;

Security to  
be given by  
the  
committee.

(d) the committee shall give security with two or more sureties in double the amount of the personal estate, and of the annual rents and profits of the real estate, for duly accounting for the same from time to time at such intervals as may be directed by the Court, for filing the inventory and for the payment into Court of the balances in his hands upon such accounting forthwith after the same shall have been ascertained or otherwise as the Court may direct; and

Form of  
security.

(e) the security shall be taken by bond in the name of the accountant of the Supreme Court, and shall be filed in his office. R.S.O. 1927, c. 98, s. 10; 1930, c. 26, s. 2; 1937, c. 39, s. 3.

#### MANAGEMENT AND ADMINISTRATION

Powers of  
Court as to  
maintenance  
of mentally  
incompetent  
person or his  
family.  
Imp. Act,  
53-54, Vict.,  
c. 5,  
s. 116 (4).

11. The powers conferred by this Act as to the management and administration of a mentally incompetent person's estate shall be exercisable in the discretion of the Court for the maintenance or benefit of the mentally incompetent person or of his family or where it appears to be expedient, in the due course of management of the property of the mentally incompetent person. R.S.O. 1927, c. 98, s. 11; 1937, c. 39, s. 3.

Rights of  
creditors.  
Imp. Act,  
53-54 Vict.,  
c. 5,  
s. 116 (5).

12. Nothing in this Act shall subject a mentally incompetent person's property to claims of his creditors further than the same is now subject thereto by due course of law. R.S.O. 1927, c. 98, s. 12; 1937, c. 39, s. 3.

13.—(1) The Court may order that any property of the mentally incompetent person, whether present or future, be sold, charged, mortgaged, dealt with or disposed of as may be deemed most expedient for the purpose of raising or securing or repaying, with or without interest, money which is to be or has been applied to,—

Power to raise money for certain purposes.

- (a) payment of the mentally incompetent person's debts or engagements;
- (b) discharge of any encumbrance on his property;
- (c) payment of any debt or expenditure incurred for the mentally incompetent person's maintenance or otherwise for his benefit;
- (d) payment of or provision for the expenses of his future maintenance.

(2) Where a charge or mortgage is made under this Act for the expenses of future maintenance, the Court may direct the same to be payable either contingently if the interest charged is contingent or future, or upon the happening of the event if the interest is dependent on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as may be deemed expedient. R.S.O. 1927, c. 98, s. 13; 1937, c. 39, s. 3.

Terms of charge or mortgage.

Imp. Act, 53-54 Vict., c. 5, s. 117.

14.—(1) The Court may order that the whole or any part of any moneys expended or to be expended under an order of the Court for the permanent improvement, security, or advantage of the property of the mentally incompetent person, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the mentally incompetent person, but so that no right of sale or foreclosure during the lifetime of the mentally incompetent person be conferred by the charge.

Charging mentally incompetent person's estate for permanent improvements.

Imp. Act, 53-54 Vict., c. 5, s. 118.

(2) The interest shall be kept down during the mentally incompetent person's lifetime out of the income of his general estate, as far as the same is sufficient to bear it.

Interest, how to be met.

(3) The charge may be made either to some person advancing the money or, if the money is paid out of the mentally incompetent person's general estate, to some person as trustee for him as part of his personal estate. R.S.O. 1927, c. 98, s. 14; 1937, c. 39, s. 3.

To whom charge to be made.

15. The Court may, by order, authorize and direct the committee of the estate of a mentally incompetent person to do all or any of the following things:—

Powers of committee under order of Court.



Imp. Act,  
53-54 Vict.  
c. 5, s. 120.

- (a) sell any property belonging to the mentally incompetent person;
- (b) make exchange or partition of any property belonging to the mentally incompetent person, or in which he is interested, and give or receive any money for equality of exchange or partition;
- (c) carry on any trade or business of the mentally incompetent person;
- (d) grant leases of any property of the mentally incompetent person for building, agricultural, or other purposes;
- (e) grant leases of minerals forming part of the mentally incompetent person's property, whether the same have been already worked or not, and either with or without the surface or other land;
- (f) surrender any lease and accept a new lease;
- (g) accept a surrender of any lease and grant a new lease;
- (h) execute any power of leasing vested in a mentally incompetent person having a limited estate only in the property over which the power extends;
- (i) perform any contract relating to the property of the mentally incompetent person entered into by him before his mental incompetency;
- (j) surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the mentally incompetent person;
- (k) exercise any power or give any consent required for the exercise of any power where the power is vested in the mentally incompetent person for his own benefit or the power of consent is in the nature of a beneficial interest in the mentally incompetent person;
- (l) give consent to the transfer or assignment of a lease where the consent of the mentally incompetent person to the transfer or assignment thereof is requisite. R.S.O. 1927, c. 98, s. 15; 1937, c. 39, s. 3.

16. Any property taken in exchange and any renewed lease accepted on behalf of a mentally incompetent person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, encumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to. R.S.O. 1927, c. 98, s. 16; 1937, c. 39, s. 3.

Property exchanged and renewed lease to be to same uses as before.

Imp. Act, 53-54 Vict., c. 5, s. 121.

17.—(1) The power to authorize leases of a mentally incompetent person's property under this Act shall extend to property of which the mentally incompetent person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the mentally incompetent person and all persons entitled in remainder and reversion expectant upon the estate tail of the mentally incompetent person, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the mentally incompetent person shall have the same rights and remedies against the lessee, his executors, administrators and assigns as the mentally incompetent person or his committee would have had.

Extent of leasing power.

Imp. Act, 53-54 Vict., c. 5, s. 122.

(2) Leases authorized to be granted or accepted by or on behalf of a mentally incompetent person under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the Court approves.

Term.

(3) Premiums or other payments on the renewal of leases may be paid out of the mentally incompetent person's estate, or charged with interest on the leasehold property. R.S.O. 1927, c. 98, s. 17; 1937, c. 39, s. 3.

Premiums etc., on renewal.

18.—(1) The mentally incompetent person, his heirs, executors, administrators, next of kin, devisees, legatees and assigns, shall have the same interest in any money arising from any sale, mortgage or other disposition, under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, or disposition, if no sale, mortgage or disposition had been made, and the surplus money shall be of the same nature as the property sold, mortgaged or disposed of.

Nature of proceeds of sale and mortgage.

(2) Money received for equality of partition and exchange, or under any lease of unopened mines, and all premiums and sums of money received upon the grant or renewal of a lease, where the property the subject of the

And of money received from certain other sources.

partition, exchange or lease was land of the mentally incompetent person, shall, subject to the application thereof for any purposes authorized by this Act, as between the representatives of the real and personal estate of the mentally incompetent person, be considered as real estate, except in the case of premiums and sums of money received upon the grant or renewal of leases of property of which the mentally incompetent person was tenant for life, in which case the premiums and sums of money shall be personal estate of the mentally incompetent person.

Powers of Court.

53-54 Vict.  
c. 5, s. 123.

Power to carry orders into effect.

Imp. Act,  
53-54 Vict.  
c. 5, s. 124.

Powers vested in mentally incompetent person as trustee or guardian.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 128.

Appointment of trustees by Court.

Imp. Act,  
53-54 Vict.  
c. 5, s. 129.  
Rev. Stat.,  
c. 165.

(3) In order to give effect to this section the Court may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as may be deemed expedient. R.S.O. 1927, c. 98, s. 18; 1937, c. 39, s. 3.

19. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of the mentally incompetent person, execute and do all such assurances and things for giving effect to any order under this Act as the Court directs, and every such assurance and thing shall be valid and effectual and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject. R.S.O. 1927, c. 98, s. 19; 1937, c. 39, s. 3.

20. Where a power is vested in a mentally incompetent person in the character of trustee or guardian, or the consent of a mentally incompetent person to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the mentally incompetent person, under an order of the Court made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs. R.S.O. 1927, c. 98, s. 20; 1937, c. 39, s. 3.

21. Where the Court exercises, in the name and on behalf of the mentally incompetent person, a power of appointing new trustees vested in the mentally incompetent person the Court, where it seems to be for the mentally incompetent person's benefit and also expedient, may make any order respecting the property subject to the trust which might have been made in the same case under *The Trustee Act*, on the appointment thereunder of a new trustee or new trustees. R.S.O. 1927, c. 98, s. 21; 1937, c. 39, s. 3.



22.—(1) Where it appears to the Court that there is reason to believe that the mental incompetency of any mentally incompetent person so found is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the mentally incompetent person, or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the mentally incompetent person, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as may be deemed proper for the temporary maintenance of the mentally incompetent person or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money, or any part thereof, to such person as under the circumstances of the case it may be thought proper to entrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied and the same shall accordingly be applied in or towards such temporary maintenance. R.S.O. 1927, c. 98, s. 22(1); 1937, c. 39, ss. 3, 7.

Provision for maintenance when disability is temporary.

(2) The receipt in writing of the person to whom payment is to be made for any money payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

Effect of receipt.

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof when and as the Court may direct. R.S.O. 1927, c. 98, s. 22(2, 3).

Liability to account.

Imp. Act. 53-54 Vict., c. 5, s. 127.

#### VESTING ORDERS

23. Where any stock is standing in the name of or is vested in a mentally incompetent person beneficially entitled thereto, or is standing in the name of or vested in the committee of the estate of a mentally incompetent person so found, in trust for the mentally incompetent person, or as part of his property, and the committee dies intestate, or himself becomes a mentally incompetent person, or is

Power to transfer stock.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 133.

out of Ontario, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, or to receive or pay over the dividends thereof as directed by an order of the Court, then the Court may order some fit person to transfer the stock to or into the name of a new committee, or of the accountant of the Supreme Court, or otherwise, and also to receive and pay over the dividends in such manner as the Court directs. R.S.O. 1927, c. 98, s. 23; 1937, c. 39, s. 3.

Stock in  
name of  
mentally  
incompetent  
person out of  
jurisdiction.

24. Where any stock is standing in the name of or vested in a person residing out of Ontario, the Court upon proof that he has been declared a mentally incompetent person and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof as the Court may direct. R.S.O. 1927, c. 98, s. 24; 1937, c. 39, s. 3.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 134.

Power to vest  
land of men-  
tally incom-  
petent  
trustee or  
mortgagee

25.—(1) Where a mentally incompetent person is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the Court may by order vest such land in such person or persons for such estate and in such manner as the Court directs.

Or a contin-  
gent right.

(2) Where a mentally incompetent person is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage the Court may by order release such land from the contingent right and dispose of the same to such person as the Court shall direct.

Effect of  
order.

(3) An order made under subsections 1 and 2 shall have the same effect as if the trustee or mortgage had been sane and had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right.

Conveyance.

(4) Where an order may be made under this section the Court may, if it is more convenient, appoint a person to convey the land or release the contingent interest, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under subsections 1 and 2. R.S.O. 1927, c. 98, s. 25; 1937, c. 39, s. 3.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 135.

26.—(1) Where a mentally incompetent person is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Court may by order vest in any person the right to transfer or to call for a transfer of the stock or to receive the dividends thereof, or vest in any person the chose in action, or any interest in respect thereof.

Mentally incompetent trustee or mortgagee of chose in action.

(2) Where any person is jointly entitled with a mentally incompetent person to any stock or chose in action upon trust or by way of mortgage the Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof either in such person alone or jointly with any other person.

Jointly interested.

(3) Where any stock is standing in the name of a deceased person whose personal representative is a mentally incompetent person or where a chose in action is vested in a mentally incompetent person as the personal representative of a deceased person, the Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof in any person whom the Court may appoint.

Mentally incompetent personal representative.

(4) Where an order may be made under this section the Court may, if it is more convenient, appoint some fit person to make or join in making the transfer. R.S.O. 1927, c. 98, s. 26; 1937, c. 39, s. 3.

Transfer. Imp. Act, 53-54 Vict. c. 5, s. 136.

27.—(1) The person in whom the right to transfer or to call for a transfer of any stock is vested may execute and do all powers of attorney, assurances and things to complete the transfer, according to the order, and the transfer shall be valid and effectual to all intents and purposes, and banks and other companies and their officers and all other persons shall be bound to obey every such order according to its terms.

Execution of powers of attorney and transfers.

(2) After notice in writing of an order under this Act it shall not be lawful for a bank or other company to transfer stock to which the order relates or pay any dividends except in accordance with the order. R.S.O. 1927, c. 98, s. 27.

Bank or company to be bound by order. Imp. Act, 53-54 Vict. c. 5, s. 136.

28. This Act and every order purporting to be made under this Act shall be a full indemnity and discharge to any bank and other company and society and their respective officers and servants, and all other persons for all acts

Order to be complete discharge.



Imp. Act,  
53-54 Vict.,  
c. 5, s. 333.

and things done or permitted to be done pursuant thereto so far as relates to any property in which a mentally incompetent person is interested either in his own right or as trustee or mortgagee, and it shall not be necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same. R.S.O. 1927, c. 98, s. 28; 1937, c. 39, s. 3.

Order to be  
conclusive  
evidence of  
mental  
incom-  
petency.

29. The fact that an order made under this Act for conveying or vesting land or releasing or disposing of a contingent right has been founded on an allegation of the mental incompetency of a trustee or mortgagee, shall be conclusive evidence of the fact alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance of any land or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order, where the same appears to have been improperly obtained. R.S.O. 1927, c. 98, s. 29; 1937, c. 39, s. 3.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 140.

Order vesting  
in trustees of  
charities.

30. The powers conferred by this Act as to vesting orders may be exercised by vesting any land, stock or chose in action in the trustee or trustees of any charitable society or in any incorporated charitable body over which the Court would have jurisdiction upon action duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the Court under its general or statutory jurisdiction. R.S.O. 1927, c. 98, s. 30.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 138.

Declarations  
and direc-  
tions by  
Court.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 139.

Appointment  
of new  
trustee.

Imp. Act,  
53-54 Vict.,  
c. 5, s. 141.

31. The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised. R.S.O. 1927, c. 98, s. 31.

32. Where the Court has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, an order may also be made appointing a new trustee or trustees. R.S.O. 1927, c. 98, s. 32.

#### MISCELLANEOUS PROVISIONS

Money in  
Court  
belonging to  
mentally  
incompetent  
person in  
any other  
part of  
Canada, or  
Great  
Britain, or  
Ireland.

33. Where there is money in any Court to the credit of a person who has been found or who is alleged to be a mentally incompetent person and such person is resident in Great Britain or Ireland or in any part of Canada, other than Ontario, upon production of an order made by a Superior Court exercising jurisdiction where such person is resident, authorizing any person to receive such money,

the Court may make an order for payment of such money to the person designated in the order to receive the same. R.S.O. 1927, c. 98, s. 33; 1937, c. 39, s. 3.

34. The Court may order the costs, charges, and ex- Costs.  
penses of and incidental to orders, issues, directions, conveyances, transfers, and all proceedings of whatever nature under this Act to be paid by any party to the application, issue or proceeding, or out of the estate of the mentally incompetent person or alleged mentally incompetent person, or partly in one way and partly in another. R.S.O. 1927, c. 98, s. 34; 1937, c. 39, s. 3.

35.—(1) Subject to the approval of the Lieutenant- Rules.  
Governor in Council, the Rules Committee may make rules for carrying this Act into effect and for regulating the costs in relation thereto, and except where inconsistent with the provisions of this Act or such rules, *The Judica- Rev. Stat.,*  
*ture Act* and rules made thereunder shall apply to proceed- c. 100.  
ings under this Act. 1941, c. 55, s. 20.

(2) Repealed. The Statute Law Amendment Act, 1946, sec. 31.

#### APPLICATION OF ACT TO PERSONS NOT MENTALLY INCOMPETENT, BUT INCAPACITATED BY MENTAL INFIRMITY

36.—(1) The powers and provisions of this Act relat- Extension of  
ing to management and administration shall apply to Act to cer-  
every person not declared to be mentally incompetent with tain persons  
regard to whom it is proved, to the satisfaction of the not declared  
Court, that he is, through mental infirmity, arising from mentally  
disease, age, or other cause, or by reason of habitual incompetent  
drunkenness or the use of drugs, incapable of managing persons.  
his affairs.

(2) The provisions of this section shall apply although Application  
the person is not a mentally incompetent person. of section.

(3) Such of the powers of this Act as are made exer- Powers of  
cisable by the committee of the estate under order of the committee,  
Court shall be exercised in the cases provided for by sub- how exercised  
section 1 by such person, in such manner, and with or and by  
without security, as the Court may direct, and any such whom.  
order may confer upon the person therein named author-  
ity to do any specified act or exercise any specified power,  
or may confer a general authority to exercise on behalf  
of the person to whom the order relates until further  
order, all or any such powers without further application  
to the Court.

Liability of  
person  
appointed.  
Imp. Act,  
53-54 Vict.,  
c. 5,  
s. 116 (1)  
(d), (2),  
54-55 Vict.,  
c. 65,  
s. 27 (4).

Application  
of s. 11.

Proceedings  
on applica-  
tion to  
discharge  
order.

(4) Every person appointed to do any such act or exercise any such power shall be subject to the jurisdiction and authority of the Court as if such person were the committee of the estate of a mentally incompetent person so declared.

(5) Section 11 shall apply to the cases provided for by subsection 1, and the person in respect of whom the order is made, and any person aggrieved or affected by the order shall have the like right to appeal therefrom as is provided for by section 5. R.S.O. 1927, c. 98, s. 36.

(6) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared incapable of managing his affairs under subsection 1, or sooner by leave of the Court, the like proceedings may be taken and the like order made as provided in section 9 in the case of a person who has been declared a mentally incompetent person. 1929, c. 32, s. 2; 1937, c. 39, s. 3; 1946 amendment.



## CHAPTER 106

## The Surrogate Courts Act

## INTERPRETATION

## 1. In this Act,—

Interpreta-  
tion.

- (a) "Administration" shall include all letters of ad-  
ministration of the effects of deceased persons,  
whether with or without the will annexed, and  
whether granted for general, special or limited  
purposes; "Adminis-  
tration."
- (b) "Common form business" shall mean the business  
of obtaining probate or administration where  
there is no contention as to the right thereto,  
including the passing of probate and administra-  
tion through a surrogate court when the contest  
is terminated, and all business of a non-conten-  
tious nature to be taken in a surrogate court in  
matters of testacy and intestacy not being pro-  
ceedings in any suit, and also the business of  
lodging caveats against the grant of probate of  
administration; "Common  
form busi-  
ness."
- (c) "County" shall include provisional judicial dis-  
trict; "County."
- (d) "Matters and causes testamentary" shall include  
all matters and cause relating to the grant and  
revocation of letters probate of wills or letters  
of administration; "Matters  
and causes  
testamen-  
tary."
- (e) "Will" shall include a testament, and all other  
testamentary instruments of which probate may  
be granted. R.S.O. 1927, c. 94, s. 1. "Will."

## SURROGATE COURTS

2. There shall be in and for every county a court of  
record to be styled "The Surrogate Court of the County  
(or united Counties or District) of ———" (*inserting the*  
*name of the county or united counties or district*). R.S.O.  
1927, c. 94, s. 2. A surrogate  
court to be  
in each  
county.

3. Every such court shall be provided with a suitable  
seal to be approved of by the Lieutenant-Governor. R.S.O.  
1927, c. 94, s. 3. Seal.

Sittings,  
where held.

4. The sittings of the court shall be held in the county town and shall be presided over by the judge thereof. R.S.O. 1927, c. 94, s. 4.

#### JUDGES

Appoint-  
ment.

5. The judge of the surrogate court shall be appointed by the Lieutenant-Governor in Council, and shall hold office during good behaviour and residence in the county for which he is appointed, and shall be subject to be removed by the Lieutenant-Governor in Council for inability, incapacity or misbehaviour established to his satisfaction. R.S.O. 1927, c. 94, s. 5.

Illness,  
absence or  
vacancy in  
office of  
judge.

6.—(1) In case of a vacancy in the office or of the illness or absence, or at the request in writing, of the judge of the surrogate court of any county or district, any judge who has authority to preside over any county or district court or any barrister of ten years' standing, on the request in writing of the judge of the surrogate court or of the Attorney-General for Ontario, may act as judge of the surrogate court. 1943, c. 28, s. 38.

Fees in  
such cases.

(2) Except in the case of a vacancy, where a judge so acts he shall not be entitled to the fees, unless with the consent of the judge of the surrogate court.

When judge-  
ship of  
surrogate  
court  
vacated.

(3) Where a judge of a county court, who is also judge of the surrogate court, vacates his county court judgeship, unless the Lieutenant-Governor in Council otherwise directs, he shall thereby vacate his judgeship of the surrogate court. R.S.O. 1927, c. 94, s. 6.

Oath of  
office.

7. Every judge of a surrogate court, before entering upon the duties of his office, shall take and subscribe the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say:

"I, \_\_\_\_\_, do swear that I will truly and faithfully, according to the best of my skill and knowledge, execute the duties, powers and trusts of Judge of the Surrogate Court of the County (or United Counties or District), of \_\_\_\_\_  
So help me God."

R.S.O. 1927, c. 94, s. 7.

Powers and  
duties of  
judge.

8. The judge of the surrogate court of a county forming part of a county court district may exercise and perform in any part of such district any power or duty assigned to the judge of a surrogate court by any statute of Ontario. 1937, c. 75, s. 2, *part*.

## SURROGATE CLERK AND REGISTRARS

## 9. Repealed. 1946 amendment.

10. There shall be a registrar for every court who Registrar. shall be appointed by the Lieutenant-Governor in Council. R.S.O. 1927, c. 94, s. 9.

11. Every registrar, before entering upon the duties of Oath of registrar. his office, shall take and subscribe the following oath:

"I, \_\_\_\_\_, do swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the \_\_\_\_\_, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done, of any will or testamentary paper, or other document or paper committed to my charge. So help me God."

R.S.O. 1927, c. 94, s. 10.

12. Every registrar, before entering upon the duties Security to be given by registrars. of his office, shall furnish such security as may be required by the Lieutenant-Governor in Council for the due performance of the duties of his office, and the provisions of *The Public Officers Act*, relating to the giving of security, Rev. Stat., c. 16. shall apply to such security. R.S.O. 1927, c. 94, s. 11.

13.—(1) The registrar shall keep his office in the Registrar's office. court house of the county, and a room therein shall be provided for that purpose, and, in the event of there being no available room therein, then at such place in the county town as the judge directs.

(2) The registrar of the surrogate court of the County In the County of Essex. of Essex may keep an office in some convenient place in the city of Windsor, subject to such arrangements as the county council of the County of Essex may assent to, and subject also to the approval of the Lieutenant-Governor in Council. R.S.O. 1927, c. 94, s. 12.

14. The office of the registrar shall be a depository Depository for the wills of living persons. for all wills of living persons given to him for safe keeping, and the registrar shall receive and keep the same upon payment of such fees and under such regulations as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 13.

15. The registrar shall file and preserve all original Preservation of testamentary instruments, papers, etc. wills of which probate or letters of administration with the will annexed are granted, and all other papers used in any matter in his court, subject to such regulations as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 14.



Transmission to Registrar of Supreme Court of list of grants, etc.

16. On the third day of every month, or oftener if required by the surrogate court rules, every registrar shall transmit by mail to the Registrar of the Supreme Court a list, in such form and containing such particulars as may be prescribed by such rules, of the grants of probate and administration made by his court up to the last day of the preceding month, and he shall in like manner make a return of every revocation of grant of probate or administration. R.S.O. 1927, c. 94, s. 15; 1946 amendment.

Registrars not to take fees for drawing or advising on certain documents.

17. A registrar shall not for fee or reward draw or advise upon any will, or upon any paper or document connected with the duties of his office, for which a fee is not expressly allowed to him by the tariff. R.S.O. 1927, c. 94, s. 16; 1946 amendment.

Rev. Stat., c. 16.

(NOTE—For returns by Registrars of Surrogate Courts, see *The Public Officers Act.*)

#### JURISDICTION AND POWERS OF THE SURROGATE COURTS

Testamentary jurisdiction to be exercised by the surrogate courts. Rev. Stat., c. 100.

18. Subject to the provisions of *The Judicature Act*, all jurisdiction and authority in relation to matters and causes testamentary, and in relation to the granting or revoking probate of wills and letters of administration of the property of deceased persons, and all matters arising out of or connected with the grant or revocation of grant of probate or administration, shall be vested in the several surrogate courts. R.S.O. 1927, c. 94, s. 17.

No action for legacy or distribution of residue.

19. An action for a legacy or for the distribution of a residue shall not be entertained by any surrogate court. R.S.O. 1927, c. 94, s. 18.

Administration not to be granted to non-resident.

20. Letters of administration shall not be granted to a person not residing in Ontario, but this shall not apply to resealing letters under section 72. R.S.O. 1927, c. 94, s. 19.

Probate or letters ancillary to persons not residing in British Dominions.

21. Letters probate shall not be granted to a person not resident in Ontario or elsewhere in the British Dominions, unless such person shall have given the like security as is required from an administrator in case of intestacy, unless in the opinion of the judge, such security should, under special circumstances, be dispensed with or be reduced in amount. R.S.O. 1927, c. 94, s. 20.

Grant, of probate or administration jurisdiction.

22.—(1) The granting of probate or letters of administration shall belong to the surrogate court of the

county in which the testator or intestate had at the time of his death his fixed place of abode.

(2) If the testator or intestate had no fixed place of abode in, or resided out of Ontario at the time of his death, the grant may be made by the surrogate court of any county in which the testator or intestate had property at the time of his death. Where decedent had no domicile in Ontario.

(3) In other cases the granting of probate or letters of administration shall belong to the surrogate court of any county. R.S.O. 1927, c. 94, s. 21. When any court may make grant.

23. Where the person or one of the persons entitled to apply for probate of a will or for letters of administration is judge of the court having jurisdiction in the matter, and he does not renounce, application by him for such probate or letters, and any subsequent application in the matter of the estate by him or by any other person may be made to the judge of the surrogate court for an adjoining county, who shall have the same authority as to such application, and generally in all matters connected with the estate, as if he were the judge of the surrogate court having jurisdiction, and he shall be entitled to the same fees, to be paid in stamps if his fees have been commuted, as he would have been entitled to if the application had been made or proceedings had been taken in the court of which he is judge. R.S.O. 1927, c. 94, s. 22. Where surrogate judge is applicant.

24. Letters probate and letters of administration granted by a surrogate court not having jurisdiction to grant the same shall, nevertheless, until revoked, have the same force and effect as if they had been granted by a surrogate court having jurisdiction. R.S.O. 1927, c. 94, s. 23. Effect of probate or letters granted without jurisdiction.

25. Letters probate and letters of administration shall have effect in all parts of Ontario. R.S.O. 1927, c. 94, s. 24. Effect of probate and administration.

#### POWER TO TRY BY JURY

26.—(1) The court may cause any question of fact arising in any proceeding therein to be tried by a jury before the judge of the court, and such trial shall take place at some ensuing sittings of the county court for the county, and be conducted in the same manner as other trials by jury in such court, and the parties shall be entitled to their right of challenge, and, for all purposes of, or incidental to the trial of questions of fact Trial of questions of fact by a jury.

by a jury, the court and the judge thereof shall have the same jurisdiction, power and authority in all respects as belong to the county courts, and the judges thereof, for like purposes.

The issue.

(2) The question directed to be tried by a jury shall be reduced into writing in such form as the court directs. R.S.O. 1927, c. 94, s. 25.

Production of instruments purporting to be testamentary.

27.—(1) Whether any suit or other proceeding is or is not pending in the court with respect to any probate or administration, every surrogate court may, on motion or otherwise in a summary way, order any person to produce and bring before the registrar, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

Examination of persons touching such instruments.

(2) If it is not shown that such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court or before the registrar, or such person as the court may direct, or upon interrogatories respecting the same, and to produce and bring in such paper or writing, and such person shall be subject to the like process in case of default in not attending or in not answering questions or interrogatories or not bringing in such paper or writing, as he would have been subject to if he had been a party to a suit in the court and had made such default, and the costs of such motion or other proceeding shall be in the discretion of the court. R.S.O. 1927, c. 94, s. 26.

Removal of proceeding to Supreme Court.

28.—(1) Any contentious cause or proceeding may be removed into the Supreme Court by order of a judge of such Court if it is of such a nature and of such importance as to render it proper that the same should be disposed of by the Supreme Court, and the property of the deceased exceeds \$2,000 in value.

Terms.

(2) The judge may impose such terms as to payment of or security for costs or otherwise as he may deem just.

Transmission of judgment to surrogate court.

(3) The judgment of the Supreme Court in any cause or proceeding so removed shall be certified to the registrar of the surrogate court from which the cause or proceeding was removed. R.S.O. 1927, c. 94, s. 27.



## APPEALS

29.—(1) Any party may appeal to the Court of Appeal from an order, determination or judgment of a surrogate court, in any matter or cause when the value of the property affected by such order, determination or judgment exceeds \$200.

Appeal to Court of Appeal in certain cases.

(2) A motion for a new trial after a trial by jury shall be deemed an appeal.

New trial.

(3) An appeal shall also lie to a judge of the Supreme Court from any order, decision or determination of the judge of a surrogate court, on the taking of accounts or upon an adjudication as to a claim or demand or as to the title to any property if the amount involved exceeds \$200, provided that notice of any such appeal taken by any person shall be served within fourteen days from the date of service upon him of a copy of the order, decision or determination and every such appeal shall be upon seven clear days' notice and shall be returnable within one month from the date of service of such copy of the order, decision or determination. R.S.O. 1927, c. 94, s. 28; 1941, c. 58, s. 1.

Appeal from audit of accounts, adjudication of claim, or adjudication on title when amount exceeds \$200.

Proviso.

(4) A copy of any order, decision or determination mentioned in subsection 3 shall be served upon such persons as the judge of the surrogate court may direct by prepaid registered mail or in such other manner as the judge may determine. 1941, c. 58, s. 1.

Service of order, etc.

(5) A judge of the Supreme Court may enlarge the time prescribed by this section for doing any act or taking any proceeding and this power may be exercised although the application is made after the expiration of the time prescribed. 1941, c. 58, s. 1.

Enlargement of time.

## PRACTICE

*Proofs to lead grant*

30.—(1) On every application for probate of a will or for letters of administration where the deceased was resident in Ontario at the time of his death, his place of abode at the time of his death shall be made to appear by affidavit of the person or one of the persons making the application, and thereupon and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted.

Where deceased resided in Ontario.

Affidavit as to place of abode.

(2) Where upon the application for probate of the will of a person who, at the time of the execution of the will, was a member of the forces or was a mariner or

Death or absence of witnesses of will of member of forces or mariner.

seaman at sea or in the course of a voyage, it appears that the witnesses are dead or are incompetent, or that the whereabouts of the witnesses, or either of them, is unknown, the judge of the surrogate court to whom such application is made, may accept such evidence as he may consider satisfactory as to the validity and proper execution of such will notwithstanding anything contained in this Act or in the rules or regulations of the surrogate court to the contrary. 1946 amendment.

"Member of the forces",—defined.

(2a) In subsection 2 "member of the forces" shall mean a member of the naval, military or air forces of Canada who, having been placed on active service or called out for training, service or duty, is serving in any of such forces. 1946 amendment.

Probate not to be granted until judge has proof of no undervaluation.

(3) No probate or letters of administration shall be granted unless and until the judge is satisfied that there is no undervaluation of the estate of which probate or administration is being sought.

Issue of probate before valuation.

(4) In cases where there is a necessity for the speedy issue of probate or administration and there is difficulty in ascertaining the true valuation of an estate, the judge may report the same to the Treasurer of Ontario, and such probate or administration may be issued upon the written consent of the Treasurer or someone authorized by him to consent in such cases.

(5) Repealed 1942, c. 34, s. 37.

Rules and Regulations.

(6) Subject to the approval of the Lieutenant-Governor in Council, the Rules Committee may make rules and regulations for the better carrying out of the provisions of subsections 3 and 4. The Statute Law Amendment Act, 1946, sec. 54.

Where deceased had no fixed place of abode in Ontario.

Affidavit.

31. On every application for probate of a will or for letters of administration where the deceased had no fixed place of abode in or resided out of Ontario at the time of his death, the same shall be made to appear by affidavit of the person or one of the persons making the application, and that the deceased died leaving property within the county to the surrogate court of which the application is made, or leaving no property in Ontario, as the case may be, and that notice of the application has been published at least three times successively in the *Ontario Gazette*, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration,

as the case may be, may be granted. R.S.O. 1927, c. 94, s. 30.

32. The affidavit as to the place of abode and property of the deceased under sections 30 and 31, for the purpose of giving a particular court jurisdiction shall be conclusive for the purpose of authorizing the exercise of such jurisdiction and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the deceased had no fixed place of abode within the particular county, or had not property therein at the time of his death, but in case it is made to appear to the judge of a surrogate court before whom the application is pending, that the place of abode of the deceased, or the situation of his property, has not been correctly stated in the affidavit, the judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he may deem just. R.S.O. 1927, c. 94, s. 31.

Conclusive-  
ness of  
affidavits.

When pro-  
ceedings may  
be stayed.

33. Where application is made for letters of administration by a person not entitled to the same as next of kin of the deceased, an order shall be made requiring the next of kin, or others having or pretending interest in the property of the deceased, resident in Ontario, to show cause why the administration should not be granted to the person applying therefor; and if neither the next of kin nor any person of the kindred of the deceased resides in Ontario, a copy of the order shall be served or published in the manner prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 32.

Proof, etc.,  
requisite for  
obtaining  
grant to  
party not  
next of kin  
to intestate.

34.—(1) If the next of kin, usually residing in Ontario and regularly entitled to administer, is absent from Ontario, the court having jurisdiction may grant a temporary administration to the applicant, or to such other person as the court thinks fit, for a limited time, or subject to be revoked upon the return of such next of kin to Ontario.

Temporary  
administra-  
tion in  
certain cases.

(2) The administrator so appointed shall give such security as the court directs, and shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the court. R.S.O. 1927, c. 94, s. 33.

Security to  
be given.

35. Subject to the provisions of subsection 3 of section 72, a notarial will made in the Province of Quebec may be admitted to probate without the production of the original will upon filing a notarial copy thereof together with the other proper proofs to lead grant. 1929, c. 23, s. 4(1).

Quebec  
notarial  
wills.



*Notice of Applications*

Notice to  
Registrar of  
Supreme Court  
of applications.

36. Notice of every application for the grant of probate or administration shall be transmitted by the registrar, by registered post, to the Registrar of the Supreme Court by the next post after the application, and the notice shall specify the name and description or addition, if any, of the deceased, the time of his death, and the place of his abode at his decease, as stated in the affidavits made in support of the application, and the name of the person by whom the application is made, and such other particulars as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 34; 1946 amendment.

Certificate  
from Registrar  
of Supreme  
Court.

37. Unless upon special order of the court, no probate or administration shall be granted until the registrar has received a certificate, under the hand of the Registrar of the Supreme Court, that no other application appears to have been made in respect of the property of the deceased, which certificate the Registrar of the Supreme Court shall forward as soon as may be to the registrar. R.S.O. 1927, c. 94, s. 35; 1946 amendment.

Registrar  
of Supreme  
Court to file  
notices.

38. All notices in respect of applications shall be filed and kept by the Registrar of the Supreme Court. R.S.O. 1927, c. 94, s. 36; 1946 amendment.

Duty of  
Registrar of  
Supreme Court  
with refer-  
ence to  
notices.

39. The Registrar of the Supreme Court shall, with reference to every such notice, examine all notices of such applications received from the several registrars, so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the deceased has been made in more than one surrogate court, and he shall communicate with the registrars as occasion may require in relation to such applications. R.S.O. 1927, c. 94, s. 37; 1946 amendment.

Where  
application  
made to  
more than  
one surro-  
gate court.

40.—(1) Where it appears by the certificate of the Registrar of the Supreme Court that application for probate or administration has been made to two or more surrogate courts, the judges of such courts respectively shall stay proceedings therein, leaving the parties to apply to a judge of the Supreme Court for such direction in the matter as he may deem necessary.

Judgment as  
to what court  
shall have  
jurisdiction.

(2) On application made to such judge he shall inquire into the matter in a summary way and adjudge and determine what surrogate court has jurisdiction.

Order as to  
costs.

(3) The judge may order costs to be paid by any of the applicants, and the order shall be enforced by the Supreme Court.

(4) The determination of the judge shall be final and conclusive, and the Registrar of the Supreme Court shall, without delay, transmit a certified copy of the judge's order to the registrars of the surrogate courts wherein such applications were made. R.S.O. 1927, c. 94, s. 38; 1946 amendment.

Judge's decision to be final.

### *Caveats*

41. Caveats against the grant of probate or administration may be lodged with the Registrar of the Supreme Court or with the registrar of any surrogate court. R.S.O. 1927, c. 94, s. 39; 1946 amendment.

Lodging.

42. Upon a caveat being lodged, the registrar shall without delay send a copy thereof to the Registrar of the Supreme Court to be entered among the caveats lodged with him, and, upon notice of an application being received from the registrar of a surrogate court under section 36, the Registrar of the Supreme Court shall without delay forward to him notice of any caveat that has been so lodged touching such application, and the notice shall accompany or be embodied in the certificate mentioned in section 37. R.S.O. 1927, c. 94, s. 40; 1946 amendment.

Notice of caveats.

### *Proof of Wills in Solemn Form*

43. Where proceedings are taken for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter the validity of a will is disputed, all persons having or pretending to have any interest in the property affected by the will may, subject to the provisions of this Act and to the surrogate court rules, be summoned to see the proceedings, and may be permitted to become parties, subject to such rules and to the discretion of the court. R.S.O. 1927, c. 94, s. 41.

Citation of persons interested.

### *Executors*

44. The court having jurisdiction may summon any person named executor of any will to prove, or refuse to prove, such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. R.S.O. 1927, c. 94, s. 42.

Citation to prove or renounce.

Imp. 21 Hen. 8, c. 5, s. 6.

45. When an executor survives the testator, but dies without having taken probate, and when an executor is summoned to take probate, and does not appear his right in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his property, shall and may, without any further

Consequences of failure to appear.

Imp. 21 and  
22, V. c. 95,  
s. 16.

renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor. R.S.O. 1927, c. 94, s. 43.

### *Infant Executors*

Where an  
infant sole  
executor.  
Imp. 38,  
Geo. III,  
c. 87, s. 6.

46. Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will may be granted to him. R.S.O. 1927, c. 94, s. 44.

Power of admin-  
istrator in  
such case.  
Imp. 38,  
Geo. 3,  
c. 87, s. 7.

47. The person to whom such administration is granted shall have the same powers as an administrator has by virtue of an administration granted to him *durante minore aetate* of the next of kin. R.S.O. 1927, c. 94, s. 45.

### COPIES OF WILLS

How copies  
obtained.

48. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registrar on payment of the prescribed fees. R.S.O. 1927, c. 94, s. 46.

### ADMINISTRATION PENDENTE LITE

When and  
by whom  
granted.

49. Pending an action touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the surrogate court having jurisdiction to grant administration in the case of intestacy may appoint an administrator of the property of the deceased person, and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of the property; and every such administrator shall be subject to the immediate control and direction of the court, and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court may deem proper. R.S.O. 1927, c. 94, s. 47.

Rights and  
powers of  
the adminis-  
trator.

### POWERS AND DUTIES OF EXECUTORS, ADMINISTRATORS AND GUARDIANS

#### *Generally*

To what per-  
sons ad-  
ministration  
shall be  
granted.  
Imp. 31,  
Edw. 3, St.  
1, c. 11, 21,  
Hen. 8, c. 5,  
s. 2.

50.—(1) Subject to the provisions of subsection 3, where a person dies intestate, or the executor named in his will refuses to prove the same, administration of the property of the deceased may be committed by the surrogate court having jurisdiction, to the husband, or to the wife, or to the next of kin, or to the wife and next of



kin, as in the discretion of the court shall seem best, and where more persons than one claim the administration as next of kin who are equal in degree of kindred to the deceased, or where only one desires the administration as next of kin, where there are more persons than one of equal kindred the administration may be committed to such one or more of such next of kin as the court may think fit.

(2) Subject to subsection 3, where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof, or an executor willing and competent to take probate and the persons entitled to administration, or a majority of such of them as are resident in Ontario, request that another person be appointed to be the administrator of the property of the deceased, or of any part of it, the right which such persons possessed to have administration granted to them in respect of it shall belong to such person.

Appointment at request of parties interested.

(3) Where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the Court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the person who if this subsection had not been enacted would have been entitled to the grant of administration, it shall not be obligatory upon the court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the court may appoint such person as the court thinks fit upon his giving such security as the court directs, and every such administration may be limited as the court thinks fit.

General power as to appointment of administrator under special circumstances.

(4) A trust company may be appointed as administrator under subsection 2 or subsection 3, either alone or jointly with another person. R.S.O. 1927, c. 94, s. 48.

Appointment of trust company.

51. After a grant of administration no person other than the administrator or executor shall have power to sue or prosecute any action, or otherwise act as executor of the deceased as to the property comprised in or affected by such grant or administration, until such administration has been recalled or revoked. R.S.O. 1927, c. 94, s. 49.

After grant of administration no person to act as executor.

Administra-  
tion limited  
to personal  
estate.

52. A person entitled to letters of administration to the property of a deceased person shall be entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate. R.S.O. 1927, c. 94, s. 50.

### *Inventories*

Filing  
inventory,  
Imp. 21,  
Hen. 8,  
c. 5, s. 4.

53.—(1) The person applying for a grant of probate, or administration, shall, before the same is granted, make or cause to be made and delivered to the registrar a true and perfect inventory verified by the oath of the applicant of all the property which belonged to the deceased at the time of his death.

Further in-  
ventory of  
subsequently  
discovered  
property.

(2) When after the grant of probate, or letters of administration, any property belonging to the deceased at the time of his death, and not included in such inventory, is discovered by the executor, or administrator, he shall, within six months thereafter, make and deliver to the registrar an inventory, duly verified by oath, of such newly discovered property.

Inventory in  
case of  
limited  
grant.

(3) Where the application or grant is limited to part only of the property of the deceased it shall be sufficient to set forth in such inventory the property intended to be affected by such application or grant. R.S.O. 1927, c. 94, s. 51.

Fees on  
increased  
valuation.

54. Where after a grant has issued out of the surrogate court the value of the estate has been increased for succession duty purposes, the executor or administrator shall forthwith pay to the registrar of the surrogate court from which the grant issued, the additional fees that would have been payable at the time of the issue had the value of the estate been placed at the amount to which it has been so increased, and the registrar shall account for such additional fees in the same manner as if the same had been paid at the time of the issue of the grant. 1929, c. 23, s. 4(2).

### *Executor Renouncing*

Conse-  
quences  
upon ex-  
ecutor re-  
nouncing.

55. Where a person renounces probate of the will of which he is appointed an executor his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his property shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor. R.S.O. 1927, c. 94, s. 53.

(NOTE—As to removal of executors, see *The Trustee Act.*) Rev. Stat., c. 165.

### *Sureties*

56. Except where otherwise provided by law, every Bonds. person to whom a grant of administration, including administration with the will annexed, is committed shall give a bond to the judge of the surrogate court by which the grant is made, to enure for the benefit of the judge of the court for the time being, or in case of the separation of counties, to enure for the benefit of any judge of a surrogate court to be named by the Supreme Court for that purpose, with a surety or sureties as may be required by the judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the surrogate court rules, and in cases not provided for by the rules, the bond shall be in such form as the judge may by special order direct. R.S.O. 1927, c. 94, s. 54.

57. It shall not be necessary for the Government of When security not required. Ontario or any department thereof or any Provincial Commission or Board created under any Act of this Legislature to give any security for the due performance of its duty as executor, administrator, trustee, committee, or in any other office to which it may be appointed by order of the court or under the provisions of any statute. 1935, c. 69, s. 2.

58.—(1) The bond shall be in a penalty of double the Penalty in bonds, etc., and as to dividing liabilities of sureties. amount under which the property of the deceased has been sworn, unless the judge directs that the same shall be reduced, and the judge may also direct that more bonds than one may be given so as to limit the liability of any surety to such amount as the judge deems proper.

(2) The amount of the security may from time to When amount of security may be reduced. time be reduced by the judge to double the amount of the property remaining in the hands of the administrator, according to the last audit of his accounts by the judge. R.S.O. 1927, c. 94, s. 55.

59. The judge on application made in a summary way, Power of surrogate courts as to assignment of bonds. and on being satisfied that the condition of the bond has been broken, may order the registrar to assign the bond to some person to be named in the order, and such person shall thereupon be entitled to sue on the bond in his own name, as if the same had been originally given to him, and shall recover thereon, as trustee for all persons interested,



the full amount recoverable in respect of any breach of the condition of the bond. R.S.O. 1927, c. 94, s. 56.

Accounts to be rendered.

60. The oaths to be taken by executors, administrators and guardians, and the bonds or other security to be given by administrators and guardians, and probates, letters of administration and letters of guardianship shall require the executor, administrator or guardian to render a just and full account of his executorship, administration or guardianship only when thereunto lawfully required. R.S.O. 1927, c. 94, s. 57.

New or additional security in certain cases.

61.—(1) Where a surety for an administrator or guardian dies or becomes insolvent or where for any other reason the security furnished by an administrator or guardian becomes inadequate or insufficient, the judge may require other or additional security to be furnished, and if the same is not furnished as directed by the judge he may revoke the grant of administration or letters of guardianship.

Order by judge *sua sponte* or on application.

(2) The order may be made by the judge *sua sponte* or on the application of any person interested. R.S.O. 1927, c. 94, s. 58.

Substitution of security.

62.—(1) Where a surety for an administrator or guardian desires to be discharged from his obligation, or where an administrator or guardian desires to substitute other security for that furnished by him, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished, on such terms as to the judge may seem proper, and may direct that, on the substituted security being furnished and, if the judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged.

How application made.

(2) The application may be made *ex parte* or on such notice as the judge directs. R.S.O. 1927, c. 94, s. 59.

Cancellation of security.

63. Where an executor or administrator has passed his final account and has paid into court or distributed the whole of the property of the deceased which has come to his hands, the judge may direct the bond or other security furnished by the executor or administrator to be delivered up to be cancelled. R.S.O. 1927, c. 94, s. 60; 1930, c. 21, s. 8(1).

64. Where an executor or administrator has produced evidence to the satisfaction of the judge that the debts of the deceased have been paid and the residue of the estate duly distributed, the judge may make an order directing the bond or other security furnished by the executor or administrator to be delivered up to be cancelled, but where an infant was or is entitled to any part of the estate under such distribution the order shall not be made until after such notice as the judge may direct has been given to the Official Guardian, and where any person who is a patient in an institution under *The Mental Hospitals Act* was or is entitled to any part of the estate under such distribution, the order shall not be made until after like notice has been given to the Public Trustee. R.S.O. 1927, c. 94, s. 61; 1930, c. 21, s. 8(1).

Cancellation of bond of administrator in distribution of estate.

Rev. Stat., c. 392.

(NOTE—As to bonds of guarantee companies, see *The Guarantee Companies Security Act*.)

Rev. Stat., c. 263.

### *Contestation of Claims Against Estate*

65.—(1) Where a claim or demand is made against the estate of a deceased person, or where the personal representative has notice of such claim or demand, he may serve the claimant with a notice in writing that he contests the same in whole or in part, and, if in part, stating what part and also referring to this section. R.S.O. 1927, c. 94, s. 62(1).

Notice of contestation of claim against estate.

(2) Within thirty days after the receipt of the notice of contestation mentioned in subsection 1, or within three months thereafter if the judge of the surrogate court on application so allows, the claimant may apply to the judge of the surrogate court for an order allowing his claim and determining the amount of it, and the judge shall hear the parties and their witnesses and shall make such order upon the application as he may deem just, and if such claimant does not make such application he shall be deemed to have abandoned his claim and the same shall be forever barred. 1933, c. 63, s. 2.

Application for order allowing claim.

(3) Where the claim is within the jurisdiction of the division court the application shall be made to a judge of a division court in which an action for the recovery of the claim might be brought, and shall be heard by the judge at the sittings of such court, unless the claimant and the personal representative consent to the application being made to the judge of the surrogate court, and in that case the application may be made to him.

Claim within jurisdiction of division court.

Notice in such cases.

(4) Not less than seven days' notice of the application shall be given to the personal representative, and where the application is to be made to the judge of the surrogate court, shall also be given to the Official Guardian if infants are concerned, and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

Right of persons interested to be heard.

(5) Where the application is made to the judge of the surrogate court, in addition to the persons to whom notice has been given, any other person who is interested in the estate shall have the right to be heard and to take part in the proceedings.

Consent to jurisdiction of surrogate court in certain cases.

(6) Where the claim, or the part of it which is contested, amounts to \$800 or more, instead of proceeding as provided by this section, the judge shall, on the application of either party, or of any of the parties mentioned in subsection 5, direct the creditor to bring an action for the recovery or the establishment of his claim, on such terms and conditions as the judge may deem just, and provided that the claimant and the personal representative may consent to have the trial before the judge of the surrogate court and in that case the trial shall take place and be disposed of before the surrogate court judge under this section.

Fees and costs when claim within division court jurisdiction.

(7) Where the claim is within the jurisdiction of the division court the fees and costs shall be according to the tariff of that court and in other cases the fees payable to the judge of the surrogate court and to the registrar shall be the same as are allowed on an audit in an estate of a value equal to the amount of the claim or so much thereof as is contested, and the fees to be allowed to counsel or solicitors shall be fixed and determined by the surrogate judge having regard to the amount involved and the importance of the contest.

Right of persons interested in appeal.

(8) Where an appeal lies, if the personal representative does not appeal from the order, the Official Guardian or any person beneficially interested in the estate may, by leave of a judge of the Supreme Court, appeal therefrom.

Right of person interested to be heard on appeal.

(9) Where the claimant or the personal representative appeals, the Official Guardian, and any person beneficially interested in the estate, may, by leave of the court which hears the appeal, appear and be heard.

Claims not presently payable.

(10) The provisions of this section shall apply, notwithstanding that the claim or demand is not presently



payable, and that, for that reason, an action for the recovery of it could not be brought.

(11) The judge may order the issue of a commission to take the testimony of any person or party residing out of Ontario.

Application for order allowing commission.

(12) The judge may make an order for the taking of the evidence of any material and necessary witness, residing in Ontario, who is sick, aged or infirm or is about to leave Ontario *de bene esse* and provide to whom notice of such examination is to be given.

Judge may make an order appointing a person to take testimony.

(13) A subpoena may be issued to enforce the attendance of witnesses to give evidence on any proceeding under this section.

Right to issue subpoenas out of court.

(14) The provisions of the rules of the Supreme Court so far as the same are applicable shall apply to every application for such commission or order for examination; the issue, execution, enforcement and return thereof and the judge shall have power to award costs of all such proceedings according to the tariff in force from time to time for like services in county courts. 1944, c. 58, s. 11.

Rules of Supreme Court shall apply.

(15) Where a claim is established under the provisions of this section no proceedings shall be taken to enforce payment of the same without the permission of the judge.

Permission for enforcement of judgment.

(16) Where permission to enforce payment of a claim is given the order shall be filed in the county court and an execution shall issue as upon a judgment of that court and an order for payment of costs may be entered in the same way. R.S.O. 1927, c. 94, s. 62.

Enforcement of judgment.

65a.—(1) Where any claim or demand not within the meaning of subsection 1 of section 65 is made against the estate of a deceased person, or where the personal representative has notice or knowledge of the claim or demand, he may serve the claimant with the notice prescribed in the said subsection.

Notice of contestation of unliquidated claims.

(2) Within the time limits mentioned in subsection 2 of section 65 the claimant may apply to the judge of the surrogate court for an order for directions as to the disposition of the claim or demand, and if the claimant does not make the application he shall be deemed to have abandoned his claim, and the same shall be forever barred.

Application by claimant for order for directions.

Powers of  
judge.

(3) The judge shall make such order upon the application for directions as he may deem just and, in particular but without limiting the generality of the foregoing, he may,—

- (a) direct the claimant to bring an action for the recovery or establishment of his claim on such terms and conditions as he may deem just; and
- (b) where the claim or demand is not presently recoverable, may prescribe the time after which the claimant shall proceed pursuant to the directions.

Idem.

(4) By consent of the claimant and personal representative the judge may direct that the trial shall take place and be disposed of before the surrogate court judge.

Application  
of parts of  
s. 65.

(5) When an order is made under the provisions of subsection 4, subsections 11, 12, 13 and 14 of section 65 shall apply.

Right of  
appeal.

(6) Any order made under subsection 2 or 3 shall be subject to review by a judge of the Supreme Court in Chambers on an appeal taken in the same manner as an appeal under the rules of court from an order of the Master of the Supreme Court; and the judge may, notwithstanding the discretionary powers of the surrogate court judge, make such order on the appeal as he would have made if he had heard the application in the first instance. 1946 amendment.

Summary  
determina-  
tion of dis-  
putes as to  
ownership.

66. Where the personal representative of any person claims the ownership of any personal property not exceeding in value \$800 and his claim is disputed by any other person, such dispute may be determined in a summary manner and the provisions of section 65 shall *mutatis mutandis* apply. R.S.O. 1927, c. 94, s. 63.

Limitations  
Act not to  
apply in  
certain  
cases.

67.—(1) The provisions of *The Limitations Act* shall not affect the claim of any person against the estate of a deceased person where notice of such claim giving full particulars of the claim and verified by affidavit, is filed with the executor or administrator of such estate at any time prior to the date upon which the claim would be barred by the provisions of *The Limitations Act*, provided that where no executor or administrator has been appointed, such notice may be filed in the office of the registrar of the surrogate court of the county where such deceased person resided at the date of his death.

Rev. Stat.,  
c. 118.

(2) Where the claim of any person against any other person would be barred by *The Limitations Act* at any time within three months after the death of the person having such claim, such claim shall for all purposes be deemed not to be barred until three months after the date of such death. 1937, c. 75, s. 2, *part*.

*Accounts of Executor, Administrator or Guardian*

68. An executor, who is also a trustee under the will, may be required to account for his trusteeship in the same manner as he may be required to account in respect of his executorship. R.S.O. 1927, c. 94, s. 64.

69.—(1) Where an executor, administrator, trustee, under a will of which he is an executor, or a guardian, has filed in the proper surrogate court an account of his dealings with the estate, and the judge has approved thereof, in whole or in part, if he is subsequently required to pass his accounts in the Supreme Court such approval, except so far as mistake or fraud is shown, shall be binding upon any person who was notified of the proceedings taken before the surrogate judge, or who was present or represented thereat, and upon every one claiming under any such person.

(2) A guardian appointed by the surrogate court may pass the accounts of his dealings with the estate before the judge of the court by which letters of guardianship were issued.

(3) The judge, on passing the accounts of an executor, administrator or such a trustee, shall have jurisdiction to enter into and make full enquiry and accounting of and concerning the whole property which the deceased was possessed of or entitled to, and the administration and disbursement thereof in as full and ample a manner as may be done in the Master's office under an administration order, and, for such purpose, may take evidence and decide all disputed matters arising in such accounting subject to appeal. R.S.O. 1927, c. 94, s. 65(1-3).

(4) The judge, on passing any accounts under this section, shall have power to inquire into any complaint or claim by any person interested in the taking of the accounts, of misconduct, neglect, or default on the part of the executor, administrator or trustee, occasioning financial loss to the estate or trust fund, and the judge, on proof of such claim, may order the executor, administrator or trustee, to pay such sum by way of damages or otherwise, as he may deem proper and just, to the

Accounting  
by executor  
trustee.

Effect of  
approval of  
accounts by  
surrogate  
judge.

Passing ac-  
counts by  
guardians.

Powers of  
judge on  
passing  
accounts.

Further  
powers.



estate or trust fund; provided that any order made hereunder shall be subject to appeal.

May order trial and give directions as to pleadings, etc.

(5) The judge may order the trial of an issue of any complaint or claim under the provisions of subsection 4, and in such case he shall make all necessary directions as to pleadings, production of documents, discovery and otherwise in connection with such issue.

Removal to Supreme Court.

(6) Any person interested in the taking of such accounts, or any executor, administrator or trustee against whom any complaint or claim has been made on the passing of such accounts, as provided in subsection 4, may apply to a judge of the Supreme Court for an order removing the proceedings to the Supreme Court, if in his opinion the claim is of such a nature or of such importance as to render it proper that the same should be disposed of by the Supreme Court, and for the purpose of making such application, the applicant shall be entitled to an adjournment of the proceedings in the Surrogate Court. 1933, c. 63, s. 3.

Notice to persons interested.

(7) The persons interested in the taking of such accounts or the making of such enquiries shall, if resident within Ontario, be entitled to not less than seven days' notice thereof, and, if resident out of Ontario, shall be entitled to such notice as the judge shall direct.

Where person under disability interested.

(8) Where an infant or a person of unsound mind is interested, such notice may be served on the Official Guardian, except in the case of a person confined in an institution under *The Mental Hospitals Act*, when such notice shall be served on the Public Trustee and unless such notice is so given the infant or person of unsound mind shall not be bound by the passing of the accounts.

Rev. Stat., c. 392.

Notice of taking accounts to be served on Public Trustee.

(9) Where by the terms of a will or other instrument in writing under which such an executor, administrator or trustee acts, real or personal property or any right or interest therein, or proceeds therefrom have heretofore been given, or are hereafter to be vested in any person, executor, administrator or trustee for any religious, educational, charitable or other purpose, or are to be applied by him to or for any such purpose, notice of taking the accounts shall be served upon the Public Trustee.

Where person to whom administration granted is not next-of-kin.

(10) Where a person has died intestate in Ontario and administration has been granted to some person, not one of the next-of-kin, and it appears to be doubtful whether the intestate left any next-of-kin him surviving

or that there are no known next-of-kin resident in Ontario, notice of taking the accounts shall be served upon the Public Trustee.

(11) Where accounts submitted to the judge of a surrogate court are of an intricate or complicated character, and in the opinion of the judge require expert investigation, the judge may appoint an accountant or other skilled person to investigate and to assist the judge in auditing the accounts. R.S.O. 1927, c. 94, s. 65(4-8). Appointment of expert on examination of accounts.

70.—(1) Neither an executor nor an administrator shall be required by any court to render an account of the property of the deceased, otherwise than by an inventory thereof, unless at the instance or on behalf of some person interested in such property or of a creditor of the deceased, nor shall such executor or administrator be otherwise compellable to account before any judge. At whose instance executors or administrators compellable to account. Imp. 1 Jac. II, c. 17, s. 6.

(2) This section shall apply notwithstanding any provision to the contrary of any bond or security heretofore given by the executor or administrator. R.S.O. 1927, c. 94, s. 66.

#### ESTATES OF SMALL VALUE

71.—(1) Where letters probate, letters of administration or letters of guardianship are sought and the whole property of the deceased or of the ward does not exceed in value \$400, the registrar shall prepare the necessary papers to lead grant, including all papers and proofs required by *The Succession Duty Act*, and the bond, if any, and administer the necessary oaths; and the total amount to be charged to the applicant for all the proceedings and services shall be \$2. Fees where estate does not exceed \$400. Rev. Stat., c. 26.

(2) Where letters probate, letters of administration or letters of guardianship are sought, and the whole property of the deceased or of the ward does not exceed \$1,000, the fees payable to the judge and the registrar shall be one-half of the fees payable according to the tariff in the case of an estate not exceeding in value \$1,000. Where property does not exceed \$1,000.

(3) If the judge has reason to believe that the property exceeds in value \$1,000, he shall refuse to proceed with the application until he is satisfied as to the real value. Judge may satisfy himself as to real value.

(4) Subject to the provisions of subsection 1, where the whole property of the deceased, or of the ward, consists of insurance money, or of insurance money and wearing apparel, although general letters probate, gen- Fees where estate consists of insurance moneys and wearing apparel.

eral letters of administration or letters of guardianship are sought, the fees payable thereon shall be as follows:

Where the insurance money does not exceed \$1,000 .....	\$4.00
Where the insurance money exceeds \$1,000, but does not exceed \$2,000 .....	6.00
Where the insurance money exceeds \$2,000 but does not exceed \$3,000 .....	8.00

(5) The Lieutenant-Governor in Council may apportion the fees payable between the judge and the registrar. R.S.O. 1927, c. 94, s. 67(1-5).

(6) The fees prescribed by this section shall be exclusive of any other fees payable to the Crown, and shall not include the fees payable in respect of contentious business. R.S.O. 1927, c. 94, s. 67(6); 1937, c. 75, s. 3.

#### RESEALING PROBATES AND LETTERS OF ADMINISTRATION

**72.**—(1) Where probate or letters of administration, or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction in the United Kingdom, or in any province or territory of the Dominion, or in any other British possession, is produced to, and a copy thereof deposited with the registrar of any surrogate court, and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration, or other document shall, under the direction of the judge, be sealed with the seal of the surrogate court, and shall thereupon, as to personal property, be of the like force and effect in Ontario, as if the same had been originally granted by such surrogate court, and shall, so far as regards Ontario, be subject to any order made by such court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby. R.S.O. 1927, c. 94, s. 68(1).

(2) Subject to the provisions of subsection 3, letters of verification issued in the Province of Quebec shall be deemed to be a probate within the meaning of this section. 1929, c. 23, s. 4(3).

(3) Where it has been shown that the will was executed in manner and form sufficient to pass real property within Ontario under *The Wills Act* and the judge so certifies, the sealing shall have the same effect as to real property as if probate had been granted by the said surrogate court.

Fees to be exclusive of fees payable to Crown.

Manner of giving effect to grants of probate, etc., of English or Colonial Courts.

Letters of verification in Quebec.

Effect of resealing as to real property.

Rev. Stat., c. 164.



(4) The letters of administration shall not be sealed with the seal of the surrogate court until a certificate has been filed, under the hand of the registrar of the court which issued the letters, that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge of the surrogate court covering the assets in Ontario as in the case of granting original letters of administration. R.S.O. 1927, c. 94, s. 68(2, 3). Security required.

#### FEEES AND COSTS

73.—(1) The fees payable to the Crown and to the judge shall be payable in law stamps. 1937, c. 75, s. 4(1). Fees payable to Crown and judge.

(2) The stamps, in respect of a grant of probate or administration or guardianship, shall be affixed to the order for the grant, and not to the probate or letters of administration or guardianship. R.S.O. 1927, c. 94, s. 69(2). Affixing stamps.

74.—(1) The fees payable upon the value of the estate of the deceased shall be calculated upon the value of the whole estate, including the real estate as well as the personal estate. 1938, c. 40, s. 2. Fees to be on value of whole estate.

(2) In calculating the value of the real property there shall be deducted the actual value of any encumbrance thereon. R.S.O. 1927, c. 94, s. 70. Proviso.

75.—(1) Subject to the approval of the Lieutenant-Governor in Council the Rules Committee may,— Power of Rules Committee as to,—

(a) make rules for regulating the practice and procedure in the surrogate courts; Rules of practice;

(b) make rules and regulations regulating and fixing all fees payable to the Crown, the judge, the registrar, and other officers of the court, and fees and expenses payable to witnesses, in respect of proceedings in such courts; Fees;

(c) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts; Fees of solicitors;

(d) prescribe forms for use in such courts. 1935, c. 69, s. 3, *part*; 1937, c. 75, s. 5; 1941, c. 58, s. 2. Forms.

(2) The existing rules, fees payable to the Crown, fees to be allowed to solicitors and forms, shall remain in force until altered, amended or repealed as in subsection 1 provided. 1935, c. 69, s. 3, *part*. Existing rules, tariff and forms.

## CHAPTER 165

## The Trustee Act

## INTERPRETATION

Inter-  
pretation.  
"Assign."

## 1. In this Act,—

- (a) "Assign" shall mean and include the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate, and "assignment" shall have a corresponding meaning;

"Assign-  
ment."

"Contingent  
right."

- (b) "Contingent right" as applied to land shall mean and include a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained; also a right of entry whether immediate or future, vested or contingent;

"Convey."

- (c) "Convey" applied to any person, shall mean and include the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance and "conveyance" shall have a corresponding meaning;

"Convey-  
ance."

"Devisee"  
Imp. Act.  
56-57 Vict. c.  
53, s. 50,  
part.

- (d) "Devisee" shall include the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;

"Instru-  
ment."

- (e) "Instrument" shall include a deed, a will and a written document and an Act of this Legislature, but not a judgment or order of a court;

"Land."

- (f) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of

inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

- (g) "Mental incompetent" or "mentally incompetent person" shall mean any person who has been declared a mentally incompetent person; "Mental incompetent."  
"Mentally incompetent person."
- (h) "Mortgage" shall be applicable to every estate, interest, or property, in land or personal estate, which is merely a security for money, and "mortgagee" shall have a corresponding meaning and shall include every person deriving title under the original mortgage; "Mortgage."  
"Mortgagee."  
Imp. Acts, 13-14 Vict. c. 60, s. 2; 56-57 Vict. c. 53, s. 50.
- (i) "Person of unsound mind" shall mean any person, not an infant, who, not having been declared a mentally incompetent person, is incapable, from infirmity of mind, to manage his own affairs; "Person of unsound mind."
- (j) "Personal estate" shall include leasehold estates and other chattels real, and also money, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein; "Personal estate."
- (k) "Personal representative" shall mean and include an executor, an administrator, and an administrator with the will annexed; "Personal representative."
- (l) "Possessed" shall be applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land; "Possessed."
- (m) "Securities" shall include stocks, funds and shares; "Securities."
- (n) "Seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates, legal and equitable, in possession, or in futurity, in any land; "Seized."
- (o) "Stock" shall include fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either "Stock."



alone or accompanied by other formalities, and any share or interest therein;

- "Transfer." (p) "Transfer," in relation to stock, shall include the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee;
- "Trust." (q) "Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, shall include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person, and "trustee" shall have a corresponding meaning and shall include a trustee however appointed and several joint trustees.
- "Trustee."
- "Will." (r) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants Act*, and any other testamentary disposition. R.S.O. 1927, c. 150, s. 1.
- Rev. Stat.  
c. 215.

#### RETIREMENT OF TRUSTEES

Retirement  
of trustees.  
Imp. Act,  
56-57 Vict.  
c. 53, s. 11.

2.—(1) Where there are more than two trustees if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place.

Application  
of section.

(2) This section shall not apply to executors or administrators. R.S.O. 1927, c. 150, s. 2.

#### APPOINTMENT OF NEW TRUSTEES

Power of ap-  
pointing new  
trustees.  
Imp. Act,  
56-57 Vict.  
c. 53,  
s. 10(1).

3.—(1) Where a trustee dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or has been convicted of an

indictable offence or is bankrupt or insolvent, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be charged, refusing or being unfit or incapable. R.S.O. 1927, c. 150, s. 3; 1934, c. 60, s. 2.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to or capable of being exercised by the sole or last surviving trustee. 1938, c. 44, s. 2. Survivorship.

4. Subject to the terms of any instrument creating a trust the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust, may appoint by will another person or other persons to be a trustee or trustees in the place of such sole or surviving or continuing trustee after his death. R.S.O. 1927, c. 150, s. 4. Authority of surviving trustee to appoint successor by will.

5.—(1) The Supreme Court may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. Power of the Court to appoint new trustees.  
Imp. Act, 56-57 Vict. c. 53, s. 25,

(2) An order under this section and any consequential vesting order or conveyance shall not operate as a discharge from liability for the acts or omissions of the former or continuing trustees. R.S.O. 1927, c. 150, s. 5. Limitation of effect of order.

6. On the appointment of a new trustee for the whole or any part of trust property,— What may be done.  
Imp. Act, 56-57 Vict. c. 53, s. 10(2).

(a) the number of trustees may be increased; and Increase in number.

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if Separate trustees for distinct trusts.

only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part; and

Where not less than two to be appointed.

- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under section 3 from his trust unless there will be at least two trustees to perform the trust; and

Execution and performance of requisite deeds and acts.

- (d) any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done. R.S.O. 1927, c. 150, s. 6; 1941, c. 55, s. 41.

Powers of new trustee.

7. Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust. R.S.O. 1927, c. 150, s. 7.

Application of Act.

8. The provisions of this Act relative to the appointment of new trustees shall apply to the case of a person nominated trustee in a will but dying before the testator. R.S.O. 1927, c. 150, s. 8.

[*As to appointment of trust company as sole trustee, see The Loan and Trust Corporations Act, Rev. Stat. c. 257.*]

#### VESTING INSTRUMENTS

Vesting of trust property in new or continuing trustees without conveyance.

9.—(1) Where an instrument, executed after the 1st day of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in him, or in them as joint tenants, and for the purposes of the trust, that estate, interest or right.

Imp. Act, 56-57 Vict. c. 53, s. 12.



(2) Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section shall not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of this Legislature.

(4) For the purpose of registration the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act. R.S.O. 1927, c. 150, s. 9.

#### VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO LAND

10.—(1) In any of the following cases,—

- (a) where the Supreme Court appoints or has appointed a new trustee; or
- (b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Ontario, or cannot be found; or
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (e) Where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or

Vesting order.—When Court may make.

On retirement of a trustee.

Application to mortgages, stocks, shares, etc.

Interpretation for registration purposes.

Imp. Act, 56-57 Vict. c. 53, s. 26.

- (f) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement;

the Supreme Court may make an order, vesting the land in any such person in any such manner, and for any such estate, as the Court may direct, or releasing, or disposing of the contingent right to such person as the Court may direct.

Vesting of estate.

(2) Where the order is consequential on the appointment of a new trustee the land shall be vested, for such estate as the Court may direct, in the persons who, on the appointment, are the trustees.

Where trustee out of Ontario.

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. R.S.O. 1927, c. 150, s. 10.

[For provisions as to mentally incompetent trustee or mortgagee, see *The Mental Incompetency Act, Rev. Stat. c. 110.*]

Orders as to contingent rights of unborn persons.

Imp. Act,  
56-57 Vict.  
c. 53, s. 27.

11. Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. R.S.O. 1927, c. 150, s. 11.

Vesting order in place of conveyance by infant mortgagee.

Imp. Act,  
56-57 Vict.  
c. 53, s. 28.

12. Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. R.S.O. 1927, c. 150, s. 12.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT  
RIGHTS, AS TO STOCKS, AND CHOSSES IN ACTION

13.—(1) In any of the following cases,—

(a) where the Supreme Court appoints, or has appointed, a new trustee; or

Vesting orders as to stock and choses in action, when Court may make.

(b) where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action,—

Imp. Act, 56-57 Vict, c. 53, s. 35.

(i) is and infant, or

(ii) is out of Ontario, or

(iii) cannot be found, or

(iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled, or

(v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action for fourteen days next after an order of the Supreme Court for that purpose has been served on him; or

(c) where it is uncertain whether a trustee entitled alone, or jointly with another person to stock, or to a chose in action is alive or dead;

the Supreme Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for, or recover a chose in action, in any such person as the Court may appoint.

(2) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

Vesting in new trustee.

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the Court may appoint.

Vesting in person having joint interest.



Appoint-  
ment of  
person to  
transfer.

(4) Where a vesting order may be made under this section the Court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

Transfer,  
how to be  
made.

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section.

After notice  
of order, no  
transfer to  
be made  
contrary  
thereto.

(6) After notice in writing of an order under this section it shall not be lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

Court may  
make  
declaration.

(7) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised.

Ships, shares  
in.

(8) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. R.S.O. 1927, c. 150, s. 13.

Imp. Act,  
56-57 Vict.  
c. 53 s. 35.

[*For provisions as to mentally incompetent trustee or mortgagee, see The Mental Incompetency Act, Rev. Stat. c. 110.*]

#### TRUSTEES FOR CHARITIES

Exercise of  
powers in  
favour of  
charities, etc.

14. The Supreme Court may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the Court would have jurisdiction upon action duly instituted. R.S.O. 1927, c. 150, s. 14.

Imp. Act,  
56-57 Vict.  
c. 53 s. 39.

Power to  
order a sale  
in proper  
cases.

15.—(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Supreme Court may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper.

Notice to  
Public  
Trustee.

(2) No such order shall be made unless and until notice of the application has been given to the Public Trustee. R.S.O. 1927, c. 150, s. 15.

## WHO MAY APPLY

16.—(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

Who may apply for appointment of new trustee, or vesting order, etc.

Imp. Act, 13 and 14 Vict. c. 60, ss. 37, 40 and 41.

(2) An order concerning any land or personal estate, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by the mortgage. R.S.O. 1927, c. 150, s. 16.

In case of mortgaged property.

## CERTAIN POWERS AND RIGHTS OF TRUSTEES

*Purchase and Sale*

17. Subject to the provisions of *The Devolution of Estates Act* where a trust for sale or a power of sale of land or personal estate is vested in a trustee he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. R.S.O. 1927, c. 150, s. 17.

Power and discretion of trustee for sale.  
Rev. Stat. c. 163.  
Imp. Act, 56-57 Vict. c. 53, s. 13, part.

18.—(1) A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Sales by trustees not impeachable on certain grounds.  
Imp. Act, 56-57 Vict. c. 53, s. 14.

(2) Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made. R.S.O. 1927, c. 150, s. 18.

Collusion between purchaser and trustee.

*Dedication or Sale for Highway Purposes*

Dedication  
or sale  
of land  
by trustee  
for municipal  
highway.

19. With the approval of the Ontario Municipal Board or of a judge of the Supreme Court, a person who holds land or a charge or claim against it or has control of the legal title, upon any trust or for a specified or particular purpose, may, to the extent of his estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose; provided that the approval shall not be necessary if such dedication or sale is otherwise within such person's powers. R.S.O. 1927, c. 150, s. 19.

*Agents*

Power to  
authorize  
receipt of  
money by  
solicitor;

20.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

Or banker.  
56-57 Vict.  
Imp. Act,  
c. 53, s. 17.

(2) A trustee may appoint a manager or a branch manager of a chartered bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

Appoint-  
ment not a  
breach of  
trust.

(3) A trustee shall not be charged with a breach of trust by reason only of his having made or concurred in making any such appointment.

Liability of  
trustee, in  
certain cases,  
not affected.

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee. R.S.O. 1927, c. 150, s. 20.

*Insurance*

Power to  
insure  
buildings.

Imp. Act,  
56-57 Vict.  
c. 53, s. 18.

21.—(1) A trustee may insure against loss or damage by fire, tempest or other casualty any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and



pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. R.S.O. 1927, c. 150, s. 21.

### *Renewals of Leases*

22.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

Power of trustees of renewable leaseholds to renew.

Imp. Act, 56 and 57 Vict., c. 53, s. 19.

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. R.S.O. 1927, c. 150, s. 22.

And to raise money for the purpose.

### *Passing of Accounts*

23.—(1) A trustee desiring to pass the accounts of his dealings with the trust estate may file his accounts in the office of the surrogate court of a county or district

When trustee may file accounts.

in which he or a co-trustee is resident or in which any part of the trust estate is situate, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the surrogate court; but in the case of trustees under a will the accounts shall be filed and passed in the office of the surrogate court by which probate of the will was granted.

Fixing compensation of trustee.

(2) Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge of the surrogate court upon the passing of the accounts of the trustee shall have power to fix the amount of compensation payable to the trustee and the trustee shall thereupon be entitled to retain out of any moneys in his hands the amount so determined. R.S.O. 1927, c. 150, s. 23.

#### *Receipts*

Receipts of trustees to be effectual discharges.

24. The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof. R.S.O. 1927, c. 150, s. 24. [*See also The Mortgage Act, Rev. Stat. c. 155.*]

#### *Surviving Trustee*

Powers of two or more trustees.

Imp. Act, 56 and 57 Vict. c. 53, s. 22.

25. Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. R.S.O. 1927, c. 150, s. 25.

#### INVESTMENTS

Power to invest trust moneys in certain securities.

26.—(1) A trustee having money in his hands which it is his duty, or which it is in his discretion to invest at interest, may invest the same in the debentures, bonds, stock or other securities of, or guaranteed by the Government of the Dominion of Canada, or of or guaranteed by any province of Canada, or of the Government of the United Kingdom, or of any municipal corporation in Canada, including debentures issued for public, separate, high or vocational school purposes or guaranteed by any municipal corporation in Ontario, or secured by or pay-

able out of rates or taxes levied under the law of any province of Canada on property situated in such province and collectible by or through the municipality in which such property is situated, in the same manner and with the same rights of enforcing payment, as in the case of general municipal taxes in such municipality, or in securities which are first hypothecs upon real estate in the Province of Quebec or first charges upon real estate held in fee simple in any other province of the Dominion of Canada, or in the bonds or debentures issued by any incorporated company, in respect of which bonds or debentures annual or semi-annual subsidy payments sufficient to pay both principal and interest thereof are, by virtue of any general Act of the Dominion of Canada, payable by the Government of the Dominion of Canada to a trust company as trustee for the holders of such bonds or debentures, provided such investments are in other respects reasonable and proper, or he may entrust the same to a trust company incorporated or registered under the laws of Ontario for guaranteed investment as set out in *The Loan and Trust Corporations Act*, provided that it has been approved by the Lieutenant-Governor in Council. 1933, c. 59, s. 17; 1934, c. 60, s. 3.

Rev. Stat.,  
c. 257.

(2) Subject to the proviso in subsection 1 any money already invested in any such stock, debentures or securities shall be deemed to have been lawfully and properly invested. R.S.O. 1927, c. 150, s. 26(2). [See also *The Loan and Trust Corporations Act*, Rev. Stat. c. 257.]

Existing  
investments  
legalized.

27.—(1) A trustee may deposit money with any of the societies or companies hereinafter mentioned, or may invest any money which it is his duty, or which it is in his discretion, to invest at interest, in terminable debentures or debenture stock of any such society or company, provided that such deposit or investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or company in his name as trustee for the particular trust estate for which they are held, and that the deposit account in the society's or company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit receipt or pass book is not transferable by endorsement or otherwise:

Investment  
of trust  
funds.

- (a) Any loan corporation registered under *The Loan and Trust Corporations Act* and having a paid-up capital and reserve fund amounting in the aggregate to not less than \$600,000, the reserve fund being not less than \$150,000; or

Investment  
of trust funds  
in registered  
loan corporations.

Rev. Stat.,  
c. 257.



In certain  
other  
companies.

- (b) Any society or company heretofore incorporated under Chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under Chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom of not less than \$200,000, and a reserve fund of not less than fifteen per centum of its paid-up capital, and the stock of which has a market value of not less than seven per centum premium. R.S.O. 1927, c. 150, s. 27(1); 1936, c. 56, s. 19.

What  
approval  
necessary.

- (2) Clauses *a* and *b* shall not apply to any society or company which has not the approval of the Lieutenant-Governor in Council as one coming within the provisions of such clauses and as one in the debentures or debenture stock of which trustees may invest or with which they may deposit money.

Restriction.

- (3) Such approval shall not be given with respect to any society or company which does not appear to have kept strictly within its legal powers as to borrowing and investing.

- (4) Repealed. The Statute Law Amendment Act, 1946, sec. 55.

Power to  
vary or  
transpose  
securities.

28. A trustee may from time to time vary or transpose any securities in which money in his hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of any nature authorized by this Act. R.S.O. 1927, c. 150, s. 28.

When trustee  
not charge-  
able for  
lending on  
insufficient  
security.

Imp. Act,  
51-52 Vict.,  
c. 59, s. 4.

29. A trustee lending money upon the security of any property upon which he may lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, whether such valuator carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed 60% of the value of the property as stated in the report and that it was made under the advice of the valuator expressed in the report. R.S.O. 1927, c. 150, s. 29; 1945, c. 27, s. 1.

30. Where a trustee has improperly advanced money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. R.S.O. 1927, c. 150, s. 30.

Trustee lending more than authorized amount.  
Imp. Act, 56-57 Vict, c. 53, s. 9.

31. A trustee shall not be chargeable with breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law. R.S.O. 1927, c. 150, s. 31.

Liability in case of change of character of investment.  
Imp. Act, 57-58 Vict. c. 10, s. 4.

#### PROTECTION AND INDEMNITY

32. A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of his trust or powers. R.S.O. 1927, c. 150, s. 32.

Extent of liability of trustees.  
Imp. Act, 56-57 Vict. c. 53, s. 24.

33.—(1) Where a trustee commits a breach of trust, at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Trustees committing breach of trust at instigation of beneficiary.  
Imp. Act, 56-57 Vict. c. 53, s. 45.

(2) This section shall apply notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation. R.S.O. 1927, c. 150, s. 33.

Application to separate estate of married women.

#### TECHNICAL BREACHES OF TRUST

34. If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be

Relief of trustees committing technical breach of trust.

a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, the court may relieve the trustee either wholly or partly from personal liability for the same. R.S.O. 1927, c. 150, s. 34.

[As to limitation of actions against trustees, see *The Limitations Act*, Rev. Stat. c. 118.]

#### PAYMENT INTO COURT

Payment into court by trustees of trust funds or securities by order of Supreme Court.  
Imp. Act, 56-57 Vict. c. 53, s. 42.

35.—(1) Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees, and it is the desire of such trustee, or of the majority of such trustees, to pay the money into Court, the Supreme Court may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if such concurrence cannot be obtained.

Payment or delivery to accountant of Supreme Court.

Imp. Act, 56-57 Vict. c. 53, s. 42.

(2) Where any such money is deposited with a banker or broker or other depository the court may order payment thereof to the accountant of the Supreme Court, and payment, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the money paid.

Payment into court by persons holding trust moneys for trustee.

(3) Any person with whom trust money has been deposited or to whose hands trust money has come, where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money, may make an application similar to that authorized by subsection 1.

Money found to be due infant, etc., on final passing of accounts in surrogate court to be paid into Court.

(4) Where, on the passing of the final accounts of a personal representative, guardian or trustee by the judge of a surrogate court, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to an infant or to a mentally incompetent person or person of unsound mind, or to a person whose address is unknown, it shall be the duty of such personal representative, guardian or trustee to pay the money into the Supreme Court to the credit of the person who is entitled to it.

Accountant to be furnished with copy of order, etc.

(5) A certified copy of the order or report of the judge shall be left with the accountant when the money



is paid in, and the person paying it in shall be entitled to deduct \$5 for his costs.

(6) Where an infant, mentally incompetent person or person of unsound mind is entitled to any money, the person by whom such money is payable may pay the same into the Supreme Court to the credit of such infant, mentally incompetent person or person of unsound mind and this shall be a sufficient discharge for the money so paid into court.

Moneys charged on land, stock, etc., to which infant, or mentally incompetent person entitled. Imp. Act, 13 and 14 Vict., c. 60, s. 48.

(7) Where a trustee desires to be relieved from his trust the court may order all securities held for the trust to be transferred to the Public Trustee.

Transfer of trust.

(8) Money paid into court shall be subject to the order of the court. R.S.O. 1927, c. 150, s. 35.

Disposition.

(9) Where, however, the person to whom money is due, as mentioned in subsections 4 and 6, is a patient in a hospital for mentally ill, mentally defective or epileptic persons and the Public Trustee is committee of his estate, the money due shall be paid over to the Public Trustee. 1930, c. 31, s. 2.

Patient in mental hospital.

#### PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST

##### *Removal of Personal Representatives*

36.—(1) The Supreme Court may remove a personal representative upon any ground upon which such Court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

Power of Court to remove.

(2) Any person so appointed shall, unless the Court otherwise orders, give such security as he would be required to give if letters of administration were granted to him under *The Surrogate Courts Act*.

Security by person appointed.

Rev. Stat., c. 106.

(3) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased. 1943, c. 28, s. 39.

Who may apply.

(4) Subject to any rules to be made under *The Judicature Act* the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the Supreme Court under this section.

Procedure.

Rev. Stat., c. 106.

(5) Where the executor or administrator removed is not a sole executor or administrator the Court need

When new appointment unnecessary.

not, unless it sees fit, appoint any person to act in the room of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator as if the person so removed had died.

Chain of representation.

(6) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

Copy of order to be filed with surrogate clerk.

(7) A certified copy of the order of removal shall be filed with the surrogate clerk, and another copy with the registrar of the surrogate court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed.

Endorsement.

(8) The date of the grant shall be endorsed on the copy of the order filed with the surrogate clerk.

Jurisdiction of surrogate court.

(9) Where the estate is less than \$1,000, the jurisdiction conferred by this section may be exercised by the surrogate court. R.S.O. 1927, c. 150, s. 36.

#### RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES

Actions by executors and administrators for torts.

37.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased; provided that if death results from such injuries no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso shall not be in derogation of any rights conferred by *The Fatal Accidents Act*. 1938, c. 44, s. 3.

Proviso.

Rev. Stat., c. 210.

Actions against executors and administrators for torts.

(2) Except in cases of libel and slander, if a deceased person committed a wrong to another in respect of his person or property, the person wronged may maintain an action against the executor or administrator of the person who committed the wrong.

(3) An action under this section shall not be brought after the expiration of one year from the death of the deceased. R.S.O. 1927, c. 150, s. 37. Limitations of actions.

[As to actions and distress for rent by personal representatives see *The Landlord and Tenant Act*, Rev. Stat. c. 219; and as to liability of personal representatives of a deceased joint contractor see *The Mercantile Law Amendment Act*, Rev. Stat. c. 178.]

38. A personal representative shall have an action of account as the testator or intestate might have had if he had lived. R.S.O. 1927, c. 150, s. 38. Action of account. 13 Edw. I. (St. 1 Westminster) c. 23.

[As to assignment and discharge of mortgages by executors, etc., see *The Mortgages Act*, Rev. Stat. c. 155.]

39. An administrator with the will annexed or an executor to whom probate is granted shall have all the power conferred by the testator upon the executor named in his will and may in all respects act as effectually as though he alone had been named by the testator as his sole executor. R.S.O. 1927, c. 150, s. 39. Powers of executor to whom probate granted.

#### *Execution of Powers*

40. Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect the executor, if any, named in such will may execute and carry into effect every such direction in respect of such land, and any estate or interest therein in the same manner and with the same effect as if he had been appointed by the testator for that purpose. R.S.O. 1927, c. 150, s. 40. Or Who may execute direction to sell, etc., where no other person is appointed.

41. Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for his dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, incumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if he had been appointed by the testator for that purpose. R.S.O. 1927, c. 150, s. 41. Idem. Or when no one named in the will to execute powers of sale, etc.

#### *Contract of Deceased*

42. Where any person has entered into a contract in writing for the sale and conveyance of land, and such Conveyance by personal representative in pursuance of a contract by deceased.



person has died intestate, or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, if the deceased would be bound, were he alive, to execute a conveyance, his personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor, and the conveyance shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity or effect. R.S.O. 1927, c. 150, s. 42.

### *Devises in Trust*

Power to raise money by sale or mortgage to satisfy charges— notwithstanding want of express power in the will.

Imp. Act, 22-23 Vict. c. 35, s. 14.

Purchaser's position  
Imp. Act, 22-23 Vict. c. 35, s. 17.

Duties and liabilities of an executor and administrator acting under the powers in this Act.

Survivorship.

43.—(1) Where, by any will coming into operation after the 18th day of September, 1865, a testator charges his land, or any specific part thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to his executors or to a trustee without any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

(2) Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof. R.S.O. 1927, c. 150, s. 43.

44. Every personal representative, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, shall be subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done by him under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. R.S.O. 1927, c. 150, s. 44.

45.—(1) Where there are several personal representatives, and one or more of them shall die, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will. R.S.O. 1927, c. 150, s. 45.

(2) Until the appointment of new personal representatives, the personal representatives or representative for the time being of a sole personal representative, or, where there were two or more personal representatives, of the last surviving or continuing personal representative, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by the sole or last surviving personal representative. 1935, c. 66, s. 22; 1938, c. 44, s. 4. Survivorship.

#### EFFECT OF REVOCATION OF AN ERRONEOUS GRANT

46.—(1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, notwithstanding that the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of such probate or appointment, including all payments made in good faith to or by the personal representative, shall be as valid and effectual as if the same had been rightly granted or made; but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to the provisions of subsections 2 and 3, recover from the person who acted under the revoked grant or appointment any part of the estate remaining in his hands undistributed and, subject to *The Limitations Act*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a husband or wife of the decedent or supposed decedent, the part so received or the value thereof. Validity of acts done prior to revocation of erroneous grant.  
Recovery of property.

(2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining in his hands undistributed his proper costs and expenses incurred in the administration. Expenses.

(3) Nothing in this section shall protect any person acting as personal representative where he has been party or privy to any fraud whereby the grant or appointment has been obtained, or after he has become aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, he acts in pursuance of a contract for valuable consideration and otherwise binding made before he became aware of such fact. Fraud.  
R.S.O. 1927, c. 150, s. 46.

#### ADMINISTRATION OF ESTATES

47.—(1) A personal representative may pay or allow any debt or claim on any evidence that he thinks sufficient. Power to pay debts.

To com-  
pound, etc.

Imp. Act.  
56-57 Vict.  
c. 53, s. 21.

(2) A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing done by him or them in good faith. R.S.O. 1927, c. 150, s. 47.

[As to contested claims, see *Surrogate Courts Act*, *Rev. Stat. c. 106.*]

In case of  
deficiency  
of assets,  
debts to rank  
*pari passu*.

Not to affect  
liens.

Over-pay-  
ment to  
creditor.

Relief from  
personal  
liability.

48.—(1) On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein shall prejudice any lien existing during the lifetime of the debtor on any of his property. R.S.O. 1927, c. 150, s. 48.

(2) Where a personal representative pays more to a creditor or claimant than the amount to which he is entitled under the provisions of subsection 1, such overpayment shall not entitle any other creditor or claimant to recover more than the amount to which he would be entitled if such overpayment had not been made. 1944, c. 66.

(3) Where a personal representative pays more to a creditor or claimant than the amount to which he is entitled under the provisions of subsection 1, the court may relieve the personal representative either wholly or partly from personal liability if it is satisfied that he has acted honestly and reasonably and for the protection or conservation of the assets of the estate. 1944, c. 66.



49.—(1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under such lease or agreement for lease.

As to liability of executor or administrator in respect of covenants, etc., in leases.  
Imp. Act, 22-23 Vict. c. 35, s. 27.

(2) The personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the lease or agreement for lease.

No personal liability for subsequent claim.

(3) Nothing in this section shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed.

Right to follow assets not affected.

R.S.O. 1927, c. 150, s. 49.

50.—(1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance by him hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, he may distribute the residuary estate of the deceased to and amongst the persons entitled thereto, without appro-

As to liability of personal representative in respect of rents, etc., in conveyances on rent-charge, etc.  
Imp. Act, 22-23 Vict. c. 35, s. 28.

priating any part, or any further part thereof, as the case may be, to meet any further liability under such conveyance or agreement for conveyance.

No personal liability for any subsequent claim.

(2) A personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

Right of grantor, etc., to follow assets not affected.

(3) Nothing in this section shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed. R.S.O. 1927, c. 150, s. 50.

Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate after notice given by trustee, assignee, executor or administrator. Imp. Act, 22-23 Vict. c. 35, s. 29.

51.—(1) Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative has given such or the like notices as, in the opinion of the court in which such trustee, assignee, or personal representative is sought to be charged, would have been directed to be given by the Supreme Court in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee, or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, he may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof amongst the persons entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim he had not notice at the time of the distribution.

Right of creditor to follow assets not affected.

(2) Nothing in this section shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same.

Subs. 1 not to apply to heirs, etc.

(3) Subsection 1 shall not apply to heirs, next of kin, devisees or legatees claiming as such. R.S.O. 1927, c. 150, s. 51.

## PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS

52. Property over which a deceased person had a general power of appointment, which he might have exercised for his own benefit without the assent of any other person, shall be assets for the payment of his debts where the same is appointed by his will, and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. R.S.O. 1927, c. 150, s. 52.

Exercise of general power by will, effect of.

3 W. & M. c. 14.

## UNDISPOSED OF RESIDUE

53.—(1) When a person dies having by will appointed an executor, such executor, in respect of any residue not expressly disposed of, shall be deemed to be a trustee for the person, if any, who would be entitled to the estate under *The Devolution of Estates Act* in case of an intestacy, unless it appears by the will that the executor was intended to take such residue beneficially.

Executor to be trustee of residue for next of kin. Rev. Stat. c. 163. Imp. Act. 11 Geo. IV, and 1 W. IV, c. 40, s. 1.

(2) Nothing in this section shall prejudice any right in respect of any residue not expressly disposed of to which, if this Act had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under *The Devolution of Estates Act* in case of an intestacy. R.S.O. 1927, c. 150, s. 53.

Where there is no person entitled to the residue. Imp. Act. 11 Geo. IV, and 1 W. IV, c. 40, s. 2. Rev. Stat. c. 163.

## RIGHTS AND LIABILITY OF REPRESENTATIVES OF EXECUTORS AND ADMINISTRATORS

54. Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life, and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors would be if they had recovered the same. R.S.O. 1927, c. 150, s. 54.

Rights and liabilities of executors of executors.

See 25 Edw. III, Stat. 5, c. 5.

55. The personal representative of any person who, as executor or as executor in his own wrong, or as administrator, wastes or converts to his own use any part of the estate of any deceased person shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living. R.S.O. 1927, c. 150, s. 55.

Liability of personal representative of one who commits waste. 30 Chas. II, c. 7, s. 1. 4 W. and M. c. 24, s. 12.

## ESTATES OF INSOLVENT DECEASED PERSONS

56.—(1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor holding security on the estate of the deceased

Creditor holding security to value same.



debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, shall place a value on such security and the creditor shall rank upon the distribution of assets only upon the unsecured portion of his claim after deducting the value of the security, unless the personal representative shall elect to take over the security as hereinafter provided.

Where personal representative requires creditor to prove claim.

(2) Where the personal representative of a deceased person is of the opinion that there may be a deficiency of assets, he may require any creditor to prove his claim and to state whether he holds any security for his claim or any part thereof, and to give full particulars of the same and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable, to place a specified value on such security and the personal representative may either consent to the creditor ranking for the amount of his claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of ten per centum upon the specified value to be paid out of the estate as soon as the personal representative has realized upon such security or is in a position to make payment out of the assets of the estate and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor, shall be the amount for which he shall rank upon the estate of the deceased debtor.

Inspectors directing of; remuneration of.

(3) Where inspectors have been appointed as hereinafter provided or where the estate is being administered under the direction or by a court, the personal representative in making his election shall act under the direction of the inspectors or of the court, as the case may be, and the remuneration of the inspectors shall be determined by the surrogate court judge on the passing of accounts.

Where claim based on negotiable instruments.

(4) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable and which is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as his security for the payment thereof, but after the maturity of such liability

and its non-payment he shall be entitled to amend and revalue his claim. 1931, c. 23, s. 7, *part*.

57.—(1) Where a creditor fails to value any security held by him which under the provisions of this Act he is called upon to value, the personal representative may apply to the judge of the surrogate court from which probate or letters of administration were issued in a summary way for an order that unless a specified value shall be placed on such security and notified in writing to the personal representative, within a time to be limited by the order, such claimant shall, in respect of the claim or the part thereof for which security is held, be wholly barred of any right to share in the proceeds of the estate unless the judge upon the application of the creditor extends the time for the valuation of the security.

when creditor holding security fails to value same.

(2) Where an estate is being administered by or under the direction of a court, such court shall exercise the jurisdiction conferred by this section upon the judge of the surrogate court. 1931, c. 23, s. 7, *part*.

Administration under direction of a court.

58.—(1) Where in the administration of the estate of a deceased person the personal representative fears that there may be a deficiency of assets or that all the creditors will not be paid in full, the personal representative may call a meeting of creditors and lay before them the situation of the estate and at such meeting inspectors may be appointed by the creditors to assist the personal representative in the administration of the estate and to advise him with respect thereto. 1931, c. 23, s. 7, *part*; 1937, c. 72, s. 59.

Calling meeting of creditors where there is a deficiency of assets.

(2) In any such case the personal representative shall call a meeting of creditors at the request in writing of creditors holding ten per centum of the amount of claims filed against the estate for the purpose aforesaid.

Creditors' request for meeting.

(3) In cases where no meeting of creditors has been held the personal representative may appoint a creditor or creditors as inspector or inspectors to assist him in the realizing and management of the estate but in such case the appointment shall be approved by the surrogate judge before the inspectors accept office. 1931, c. 23, s. 7, *part*.

Appointment of creditor as an inspector.

[As to priority in respect of wages, see *The Wages Act, Rev. Stat. c. 196.*]

## SUMMARY APPLICATION TO COURT FOR ADVICE

Trustee, etc., may apply for advice in management of trust property.

Imp. Act, 22-23 Vict., c. 35, s. 30.

59.—(1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Supreme Court for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of his ward or his testator or intestate.

Indemnity of trustee, etc., acting as advised.

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian, or personal representative, in the subject matter of the application, unless he has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. R.S.O. 1927, c. 150, s. 59.

## ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES

Allowance to trustees, etc.

60.—(1) A trustee, guardian or personal representative, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate, as may be allowed by a judge of the Supreme Court or by any master or referee to whom the matter may be referred.

Though estate not before the Court.

(2) The amount of such compensation may be settled although the estate is not before the Court in an action.

Allowance to personal representative for services.

(3) The judge of a surrogate court, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the estate.

Allowance to barrister or solicitor trustee for professional services.

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services.

Where allowance fixed by the instrument.

(5) Nothing in this section shall apply where the allowance is fixed by the instrument creating the trust. R.S.O. 1927, c. 150, s. 60.



## MISCELLANEOUS

61. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of *The Vendors and Purchasers Act*. R.S.O. 1927, c. 150, s. 61. Trustees buying or selling. Rev. Stat. c. 168.

*Indemnity*

62. This Act, and every order purporting to be made under it, shall be a complete indemnity to all persons for any acts done pursuant thereto. R.S.O. 1927, c. 150, s. 62. Indemnity. Imp. Acts, 15 and 16 Vict. c. 55, s. 7; 56-57 Vict. c. 53, s. 49.

[See also *The Judicature Act*, Rev. Stat. c. 100.]

[As to the protection of purchasers, see also section 59 of *The Conveyancing and Law of Property Act*, Rev. Stat. c. 152.]

## COSTS

63. The Supreme Court may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act, or any part thereof, to be paid or raised out of the property in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may deem proper. R.S.O. 1927, c. 150, s. 63. Costs may be ordered to be paid out of estate.

## APPLICATION OF ACT

64. Subject to section 65, unless otherwise expressed therein, the provisions of this Act shall supply to all trusts whenever created and to all trustees whenever appointed. R.S.O. 1927, c. 150, s. 64. Application of Act.

65. The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument creating the trust, and shall have effect subject to the terms thereof. R.S.O. 1927, c. 150, s. 65. Additional powers given.

66. Nothing in this Act shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. R.S.O. 1927, c. 150, s. 66. Express terms of trust instrument to prevail.

## CHAPTER 164

## The Wills Act

## INTERPRETATION

Inter-  
pretation.  
"Land."

## 1. In this Act,

(a) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be paid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

"Mortgage."  
Imp. Act,  
30-31 V.  
c. 69, s. 2.

(b) "Mortgage" shall include any lien for unpaid purchase money, and any charge, incumbrance, or obligation of any nature whatever upon any land or tenements of a testator or intestate, and "mortgagee" shall have a meaning corresponding with that of mortgage;

"Mort-  
gagee."

"Personal  
estate."

(c) "Personal estate" shall include leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein;

"Real  
estate."

(d) "Real estate" shall include messuages, land, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right, or interest (other than a chattel interest) therein;

"Will."  
Imp. Act,  
1 V. c. 26,  
s. 1.

(e) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in

the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants Act*, and any other testamentary disposition. R.S.O. 1927, c. 149, s. 1.

Rev. Stat.  
c. 215.

# WILLS BEFORE 1ST JANUARY, 1874

2. Where a will made before, and not re-executed, re-published or revived after the 1st day of January, 1874, by any person dying after the 6th day of March, 1834, contains a devise in any form of words of all such real estate as the testator dies seised or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor, after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. R.S.O. 1927, c. 149, s. 2.

When real estate subse-  
quently  
acquired  
may pass by  
the will.

3. Where land is devised in any such will it shall be considered that the devisor intended to devise all such estate as he was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise. R.S.O. 1927, c. 149, s. 3.

What estate  
deemed to  
pass by  
devise.

4. Any will affecting land executed after the 6th day of March, 1834, and before the 1st day of January, 1874, in the presence of and attested by two or more witnesses shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if the witnesses subscribed their names in presence of each other, although their names were not subscribed in presence of the testator. R.S.O. 1927, c. 149, s. 4.

Witness need  
not subscribe  
in the pre-  
sence of  
the testator.

5. After the 4th day of May, 1859, and before the 1st day of January, 1874, every married woman might, by devise or bequest executed in the presence of two or more witnesses, neither of whom was her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she might see fit, in the same manner as if she were sole and unmarried. R.S.O. 1927, c. 149, s. 5.

Will by mar-  
ried woman  
between 4th  
May, 1859,  
and  
1st January,  
1874.



## WILLS AFTER 1ST JANUARY, 1874

Operation of  
succeeding  
sections.

Imp. Act,  
1 V. c. 26,  
s. 34.

Application  
of sections  
21, 22, 25  
and 26.

Rev. Stat.  
cc. 163, 153.

Power to  
dispose of all  
property.  
Imp. Act,  
1 V. c. 26,  
s. 3.

Estates pur  
autre vie.

Contingent  
interests.

Rights of  
entry.

Property  
acquired  
after the  
will.

Widow's  
right to  
dispose of  
crop. 20 Hy.  
3 (St. of  
Merton) c. 2.

Wills by  
infants in-  
valid. Imp.  
Act, 1 V.  
c. 26, s. 7.

6. Unless herein otherwise expressly provided, the subsequent sections of this Act shall not extend to any will made before the 1st day of January, 1874; but every will re-executed or republished, or revived by any codicil, shall for the purposes of those sections, be deemed to have been made at the time at which the same was so re-executed, republished or revived. R.S.O. 1927, c. 149, s. 6.

7. Sections 21, 22, 25 and 26 shall not apply to the will of any person who died before the 1st day of January, 1869, but shall apply to the will of every person who died since the 31st day of December, 1868. R.S.O. 1927, c. 149, s. 7.

8. Subject to the provisions of *The Devolution of Estates Act* and of *The Accumulations Act*, every person may devise, bequeath, or dispose of by will, executed in manner hereinafter mentioned, all real estate and personal estate to which he may be entitled, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon his heirs or upon his executor or administrator, and the power hereby given shall extend to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether the same are corporeal or incorporeal hereditaments, and also to all contingent, executory, or other future interests in any real estate or personal estate, whether the testator is or is not ascertained as the person, or one of the persons, in whom the same may become vested, and whether he is entitled thereto under the instrument by which the same were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real estate and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. R.S.O. 1927, c. 149, s. 8.

9. A widow may, in like manner, bequeath the crop of her ground as well of her dower as of other her real estate. R.S.O. 1927, c. 149, s. 9.

10. Save as provided by subsection 2 of section 13 no will made by any person under the age of twenty-one years shall be valid. R.S.O. 1927, c. 149, s. 10.

11.—(1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

Execution.  
Imp. Act,  
1 V. c. 26,  
s. 9.

Attestation.

(2) Every will, so far only as regards the position of the signature of the testator, or of the person so signing for him, shall be valid, within the meaning of this Act, if the signature is so placed, at, or after, or following or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will, and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature, and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature shall be operative to give effect to any disposition, or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. R.S.O. 1927, c. 149, s. 11.

Position of  
signature.  
Imp. Act,  
15-16 V.  
c. 24, s. 1.

12. No appointment made by will, in exercise of any power, shall be valid unless the same is executed in manner hereinbefore required, and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execu-

Exercise of  
appoint-  
ments by  
will. Imp.  
Act, 1 V. c.  
26, s. 10.

tion of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O. 1927, c. 149, s. 12.

Will of member of the forces.

13.—(1) The will of any member of the forces, or of any mariner or seaman when at sea or in course of a voyage, disposing of real or personal property, or both, may be made by a writing signed by him without any further formality or any requirement as to the presence of or attestation or signature by any witness.

Age of testator.

(2) The fact that the member of the forces or the mariner or seaman is under the age of twenty-one years at the time he makes his will shall not invalidate it.

"Member of the forces"—meaning of.

(3) In this section "member of the forces" shall mean a member of the naval, military or air forces of Canada who, having been placed on active service or called out for training, service or duty, is serving in any of such forces. 1942, c. 40.

Publication unnecessary. Imp. Act, 1 V. c. 26, s. 13.

14. Every will executed in manner hereinbefore required shall be valid without any other publication thereof. R.S.O. 1927, c. 149, s. 14.

Effect of incompetency of witness. Imp. Act, 1 V. c. 26, s. 14.

15. If any person who attests the execution of a will is, at the time of the execution thereof, or becomes at any time afterwards, incompetent to be admitted as a witness to prove the execution thereof, such will shall not on that account be invalid. R.S.O. 1927, c. 149, s. 15.

Gifts, etc., to witness invalid. Imp. Act, 1 V. c. 26, s. 15.

16. If any person attests the execution of any will to whom, or to whose wife or husband, any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real estate or personal estate, other than and except charges and directions for the payment of any debt, is thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or such wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. R.S.O. 1927, c. 149, s. 16.



17. In case, by any will, any real estate or personal estate is charged with any debt, and any creditor, or the wife or husband of any creditor, whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. R.S.O. 1927, c. 149, s. 17.

Creditor as witness.  
Imp. Act,  
1 V. c. 26,  
s. 16.

18. No person shall, on account of his being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. R.S.O. 1927, c. 149, s. 18.

Executor as witness.  
Imp. Act,  
1 V. c. 26,  
s. 17.

19.—(1) Every will made out of Ontario by a British subject, whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed for the purpose of being admitted to probate in Ontario, if the same was made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the law then in force in that part of His Majesty's Dominions where he had his domicile of origin.

Execution out of Ontario by a British subject.

Imp. Act,  
24 and 25 V.  
c. 114.

(2) Every will made within Ontario by a British subject whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed and shall be admitted to probate in Ontario if the same was made and executed according to the forms required by the law of Ontario.

Execution by British subject in Ontario.

(3) No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Change of domicile.

(4) Nothing in this section shall invalidate any will, as regards personal estate, which would have been valid if this section had not been passed, except as such will may be revoked or altered by any subsequent will made valid by this section.

Saving.

(5) This section, except subsection 2, shall extend only to wills made by persons dying after the 17th day of March, 1902, and subsection 2 shall extend only to wills made by persons dying after the 19th day of March, 1910. R.S.O. 1927, c. 149, s. 19.

Application to wills of persons dying after 17th March, 1902.

Revocation  
by marriage.  
Imp. Act,  
1 V. c. 26,  
s. 18.

20.—(1) Every will made by any person dying on or after the 13th day of April, 1897, shall be revoked by the marriage of the testator, except,—

Exceptions.

- (a) where it is declared in the will that the same is made in contemplation of such marriage;
- (b) Where the wife or husband of the testator elects to take under the will, by an instrument in writing signed by the wife or husband and filed, within one year after the testator's death, in the office of the surrogate clerk at Toronto;
- (c) where the will is made in the exercise of a power of appointment and the real estate or personal estate thereby appointed would not in default of such appointment pass to the testator's heirs, executor or administrator, or the person entitled as the testator's next of kin under *The Devolution of Estates Act*.

Rev. Stat.  
c. 163.

Wills of  
persons  
dying be-  
tween 31st  
Dec., 1868,  
and 13th  
April, 1897.

(2) The will of any testator who died between the 31st day of December, 1868, and the 13th day of April, 1897, shall be held to have been revoked by his subsequent marriage, unless such will was made under the circumstances set forth in clause c. R.S.O. 1927, c. 149, s. 20.

Change in  
circumstan-  
ces. Imp.  
Act, 1 V.  
c. 26, s.19

21. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. R.S.O. 1927, c. 149, s. 21.

Revocation,  
how effected.  
Imp. Act,  
1 V. c. 26,  
s. 20.

22. No will, or any part thereof, shall be revoked otherwise than as aforesaid provided by section 20, or by another will executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same. R.S.O. 1927, c. 149, s. 22.

Oblitera-  
tions, inter-  
lineations,  
etc.  
Imp. Act,  
1 V. c. 26,  
s. 21.

23. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or

in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or in some other part of the will. R.S.O. 1927, c. 149, s. 23.

24. No will, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same, and where any will which has been partly revoked, and afterwards wholly revoked, is revived such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R.S.O. 1927, c. 149, s. 24.

Revival,  
Imp. Act,  
1 V. c. 26,  
s. 22.

25. No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real estate or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real estate or personal estate, as the testator had power to dispose of by will at the time of his death. R.S.O. 1927, c. 149, s. 25.

Operation of  
the will as to  
any interest  
left in  
testator.  
Imp. Act,  
1 V. c. 26,  
s. 23.

26.—(1) Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

Will to speak  
from death.  
Imp. Act,  
1 V. c. 26,  
s. 24.

(2) This section shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband. R.S.O. 1927, c. 149, s. 26.

Imp. Act,  
56-57 V. c.  
63, s. 3.

27. Unless a contrary intention appears by the will such real estate as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. R.S.O. 1927, c. 149, s. 27.

Disposition  
of lapsed de-  
vise. Imp.  
Act, 1 V.  
c. 26, s. 25.



Disposition  
of leaseholds  
under a  
general de-  
vise of real  
estate. Imp.  
Act. 1 V.  
c. 26, s. 26.

28. A devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them, to which such description will extend as well as freehold estates, unless a contrary intention appears by the will. R.S.O. 1927, c. 149, s. 28.

Disposition  
of property  
over which  
testator has  
a general  
power of  
appointment  
under gen-  
eral devise  
or bequest.  
Imp. Act,  
1 V. c. 26,  
s. 27.

29. A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. R.S.O. 1927, c. 149, s. 29.

Estate pass-  
ing under  
devise with-  
out words of  
limitation.  
Imp. Act,  
1 V. c. 26,  
s. 28.

30. Where any real estate is devised to any person without any words of limitation such devise shall, subject to *The Devolution of Estates Act*, be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, unless a contrary intention appears by the will. R.S.O. 1927, c. 149, s. 30.

Rev. Stat.  
c. 163.

Meaning of  
"heir" in a  
devise of real  
estate.

31. Where any real estate is devised by any testator, dying on or after the 5th day of March, 1880, to the heir or heirs of such testator, or of any other person, and no contrary or other intention is signified by the will, the words "heir" or heirs" shall be construed to mean the person or persons to whom the real estate of the testator, or of such other person as the case may be, would descend under the law of Ontario in case of an intestacy. R.S.O. 1927, c. 149, s. 31.

32. In any devise or bequest of real estate or personal estate, the words "die without issue", or "die without leaving issue", or "have no issue", or any other words which import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by the will by reason of such person having a prior estate tail, or of a preceding gift, being without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but this Act shall not extend to cases where such words import if no issue described in a preceding gift to be born, or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S.O. 1927, c. 149, s. 32.

Import of words "die without issue," or to that effect. Imp. Act, 1 V. c. 26, s. 29.

Saving.

33. Where any real estate is devised to a trustee or executor such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold is thereby given to him expressly or by implication. R.S.O. 1927, c. 149, s. 33.

Estate passing under devise to trustee or executor.

Imp. Act, 1 V. c. 26, s. 30.

34. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall, subject to *The Devolution of Estates Act*, be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1927, c. 149, s. 34.

When devise to a trustee shall pass the whole estate beyond what is requisite for the trust. Imp. Act, 1 V. c. 26, s. 31.

Rev. Stat. c. 163.

35. Where any person to whom any real estate is devised for an estate tail, or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after

When devises in tail not to lapse. Imp. Act, 1 V. c. 26, s. 32.

the death of the testator, unless a contrary intention appears by the will. R.S.O. 1927, c. 149, s. 35.

When gifts to issue or certain other relatives not to lapse by reason of death in lifetime of testator.

36.—(1) Where any person, being a child or other issue or the brother or sister of the testator to whom any real estate or personal estate is devised or bequeathed, for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator either before or after the making of the will, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Application of section to bequest to class.

(2) The provisions of this section shall apply to a devise or a bequest to children or other issue or to brothers or sisters as a class. R.S.O. 1927, c. 149, s. 36.

Primary liability of real estate to satisfy specific charge.

Imp. Act, 17-18 V. c. 113, s. 1.

37.—(1) Where any person has died since the 31st day of December, 1865, or hereafter dies, seised of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum of money by way of mortgage, and such person has not by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Consequence of general direction for payment of debts out of personality or residue. Imp. Act, 30-31 V. c. 69, s. 1, and 40-41 V. c. 31, s. 1.

(2) In the construction of a will to which this section relates, a general direction that the debts, or that all the debts, of the testator shall be paid out of his personal estate, or a charge or direction for the payment of debts upon or out of residuary real estate and personal estate or residuary real estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in subsection 1 contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the



testator's debts charged by way of mortgage on any part of his real estate.

(3) Nothing herein shall affect or diminish any right of the mortgagee to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise, and nothing herein shall affect the rights of any person claiming under any will, deed or document made before the 1st day of January, 1874. R.S.O. 1927, c. 149, s. 37. <sup>Saving of mortgagee's rights.</sup>

## Table of Intestate Succession in Ontario

<i>If a person dies without making a Will, leaving:</i>	<i>The estate will be distributed in Ontario as follows:</i>
1. Wife only and no issue .....	\$5,000 and two-thirds of the residue to wife; balance to next-of-kin in equal degree to intestate or their legal representatives.
2. Husband only and no issue .....	Half to him and half equally among next-of-kin in equal degree to intestate.
3. Wife and child .....	\$5,000 and one-half of residue to wife; balance to child or legal representative.
4. Wife and children .....	\$5,000 and one-third of residue to wife; balance to children, issue of any deceased child taking by representation.
5. Husband and child or children .....	One-third to husband; two-thirds to child or children.
6. Wife and mother .....	\$5,000 and two-thirds of residue to wife; balance to mother.
7. Wife and father .....	\$5,000 and two-thirds of residue to wife; balance to father.
8. Wife and brother .....	\$5,000 and two-thirds of residue to wife; balance to brother.
9. Wife and brother and sister .....	\$5,000 and two-thirds of residue to wife; balance equally to brother and sister.
10. Wife and brothers or sisters and children of deceased brothers or sisters .....	\$5,000 and two-thirds of residue to wife; balance equally to brothers and sisters and children of deceased brothers or sisters by representation.
11. Wife, mother and brother or sister .....	\$5,000 and two-thirds of residue to wife; balance to mother and brother or sister equally.
12. Wife, mother, brothers or sisters and nephews or nieces .....	\$5,000 and two-thirds of residue to wife; balance to mother, brothers or sisters, nephews or nieces but the nephews and nieces take by representation the share of deceased parent.

13. Wife, mother, nephews and  
nieces .....\$5,000 and two-thirds of residue to  
wife; balance to mother,  
nephews and nieces but the  
nephews and nieces take by rep-  
resentation the share of deceased  
parent.
14. Child, children or their lineal  
descendants .....All to him, her or them, children  
taking per capita, grandchildren  
per stirpes by representation.
15. Children by two wives .....Equally to all.
16. Child and grandchild by de-  
ceased child .....Half to child and half to grand-  
child.
17. No wife nor issue .....All to father, mother, brothers and  
sisters equally. Children of any  
deceased brother or sister take  
their parent's share. If no father,  
mother, brother or sister nor  
children of deceased brother or  
sister, all to next-of-kin in equal  
degree of consanguinity to the  
intestate.
18. Father and mother .....Half to each.
19. Father only .....All to father.
20. Mother only .....All to mother.
21. Mother and brother .....Half to each.
22. Mother, brother and sister .....Equally to all.
23. Father, mother, brother and  
sister .....Equally to all.
24. Mother and posthumous bro-  
ther or sister .....Half to each.
25. Brothers and sisters only .....Equally to all.
26. Brothers and sisters and post-  
humous brother or sister .....Equally to all.
27. Brothers and sisters of whole  
blood and brothers and sisters  
of half blood .....Equally to all.
28. Brothers or sisters and  
nephews and nieces .....To nephews and nieces per stirpes;  
to others equally.
29. Brother or sister and grand-  
father .....All to brother or sister.
30. Brother or sister and aunts .....All to brother or sister.



31. Brother's or sister's daughter  
or son and brother's or sister's  
grandchild ..... All to brother's or sister's daughter  
or son.
32. Grandparents ..... Equally to all.
33. Grandfather and grandmother,  
uncle or aunt ..... All to grandfather and grandmo-  
ther equally.
34. Uncle and aunt ..... Half to each.
35. Uncles and aunts, nephews and  
nieces ..... All to nephews and nieces per  
capita.
36. Uncle and deceased uncle's  
child ..... All to uncle.
37. Uncle on mother's side and  
deceased uncle's or aunt's  
child ..... All to uncle.
38. Uncle's and aunt's children and  
brother's or sister's grand-  
children ..... Equally to all.
39. Nephew by brother and ne-  
phew by half-sister or half-  
brother ..... Equally to both.
40. Nephews and nieces by de-  
ceased brother and nephews  
and nieces by deceased sister... Equally to all per capita.
41. Cousins of same degree ..... Equally to all.
42. Mother and sister and ne-  
phews and nieces ..... Equally, nephews and nieces taking  
per stirpes.
43. Father, mother, sister, ne-  
phews and nieces ..... Equally, nephews and nieces tak-  
ing per stirpes. (*Walker vs.*  
*Allan*, 24 A.R. 336).

SURROGATE COURT TARIFF

ESTATES	APPLICATION FOR PROBATE OR ADMINISTRATION	PREPARATION OF SUCCESSION DUTY SCHEDULES ONTARIO	PREPARATION OF SUCCESSION DUTY STATEMENTS DOMINION	PASSING ACCOUNTS ON RECEIPTS OF CAPITAL AND REVENUE	ADVERTISING FOR CREDITORS
\$1,000 and under	\$15	\$15	\$7.50	\$25	In estates up to
1,000 - 3,000	25	15	7.50	35	\$50,000
3,000 - 5,000	40	20	10.00	40	\$7.50
5,000 - 10,000	60	25	12.50	50	
10,000 - 15,000	100	30	22.50	60	In estates over
15,000 - 20,000	125	35	26.25	70	\$50,000
20,000 - 25,000	150	50	37.50	80	\$10.00
25,000 - 50,000	175	75	56.25	\$100 plus one-tenth of one per cent. on all excess over \$25,000 up to \$50,000	
50,000 - 100,000	\$200 plus one-tenth of one per cent. on all excess over \$50,000.	100	75.00	\$125 plus one-tenth of one per cent. on all excess over \$50,000.	
100,000 - 200,000		125	93.75		
200,000 - 400,000		150	112.50		
400,000 - 500,000		175	131.25		
500,000 - 1,000,000		200	150.00		
1,000,000 - and up	In discretion of the Judge	250	187.50	In discretion of the Judge	

In cases of probate fees and succession duty schedules and statements and on passing of accounts, the same to be subject to increase at discretion of Surrogate Court Judge, where the above tariff of fees is in his opinion inadequate.

On passing of accounts, where solicitors for beneficiaries attend, each solicitor to be allowed such an amount as the Surrogate Court Judge may determine.

For legal services not covered by tariff, such fees as may be allowed by Surrogate Court Judge.

For distributing estate after passing of accounts, such fees as may be allowed by Surrogate Court Judge.

For affidavits required by Succession Duty Departments such allowance as may be made by Surrogate Court Judge.

## INCIDENTAL ITEMS

Revocation of Grant (subject to increase) .....	\$25
Settling liability for or amounts of succession or death duties, such allowances as Surrogate Court Judge may see fit.	
Fees on filing for Ancillary Grants to be on same scale as on grant of probate or administration.	
Copies—for each notarial sworn certified or authenticated copy of probate or administration, including letter .....	\$3
minimum, subject to increase where Will exceeds two pages in length, at the rate of ten cents per folio per copy for such excess.	
Drawing caveat .....	\$5
Drawing Notice of Contestation of claim .....	\$10
Attendance where action directed to be brought or where preliminary proceedings settled .....	\$15
Contentious business in cases involving over \$800 to be on Supreme Court Tariff, subject to the discretion of the Surrogate Court Judge.	
Releases in estates under \$10,000 each .....	\$3
Releases in estates between \$10,000 and \$100,000 each .....	\$7











